

EXHIBIT 302 – A

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

7 : CASE NO.
8 THIS DOCUMENT : 1:17-MD-2804
9 RELATES TO ALL CASES:

 : Hon. Dan A.
 : Polster

10 - - -

 Saturday, August 4, 2018

11 - - -

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW

14 - - -

15 Videotaped deposition of
16 DAVID MAY, taken pursuant to notice, was
17 held at the law offices of Reed Smith,
18 LLP, Three Logan Square, 1717 Arch
19 Street, Philadelphia, Pennsylvania 19103,
20 beginning at 9:01 a.m., on the above
21 date, before Amanda Dee Maslynsky-Miller,
22 a Certified Realtime Reporter.

19 - - -

23 GOLKOW LITIGATION SERVICES
24 877.370.3377 ph| 917.591.5672 fax
 deps@golkow.com

Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 BARON & BUDD P.C.</p> <p>4 BY: MARK PIFKO, ESQUIRE</p> <p>5 BY: STERLING CLUFF, ESQUIRE</p> <p>6 15910 Ventura Boulevard</p> <p>7 #1600</p> <p>8 Encino, California 91436</p> <p>9 (818) 839-2333</p> <p>10 mpfiko@baronbudd.com</p> <p>11 Scluff@baronbudd.com</p> <p>12 - and -</p> <p>13 BY: SCOTT SIMMER, ESQUIRE</p> <p>14 Washington, D.C.</p> <p>15 (202) 333-4562</p> <p>16 Ssimmer@baronbudd.com</p> <p>17 Representing the Plaintiffs</p> <p>18 REED SMITH, LLP</p> <p>19 BY: ROBERT A. NICHOLAS, ESQUIRE</p> <p>20 BY: JOSEPHY J. MAHADY, ESQUIRE</p> <p>21 BY: JEFFREY R. MELTON, ESQUIRE</p> <p>22 BY: SHANNON E. MCCLURE, ESQUIRE</p> <p>23 BY: THOMAS H. SUDDATH JR., ESQUIRE</p> <p>24 Three Logan Square</p> <p>1717 Arch Street</p> <p>Philadelphia, PA 19103</p> <p>(215) 851-8100</p> <p>Rnicholas@reedsmith.com</p> <p>jmahady@reedsmith.com</p> <p>Jmelton@reedsmith.com</p> <p>Smcclure@reedsmith.com</p> <p>Tsuddath@reedsmith.com</p> <p>Representing the Defendant,</p> <p>Amerisource Bergen Drug</p> <p>Corporation</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 PELINI CAMPBELL & WILLIAMS, LLC</p> <p>4 BY: ERIC J. WILLIAMS, ESQUIRE</p> <p>5 8040 Cleveland Avenue NW</p> <p>6 Suite 400</p> <p>7 North Canton, OH 44720</p> <p>8 330.305.6400</p> <p>9 ejwilliams@pelini-law.com</p> <p>10 Representing the Defendant,</p> <p>11 Prescription Supply, Inc.</p> <p>12</p> <p>13 WILLIAMS & CONNOLLY, LLP</p> <p>14 BY: MATTHEW C. MONAHAN, ESQUIRE</p> <p>15 725 Twelfth Street, N.W.</p> <p>16 Washington, DC 20005</p> <p>17 202.434.5000</p> <p>18 mmonahan@wc.com</p> <p>19 Representing the Defendant,</p> <p>20 Cardinal Health</p> <p>21</p> <p>22 ARNOLD & PORTER KAYE SCHOLER LLP</p> <p>23 BY: SAMUEL LONERGAN, ESQUIRE</p> <p>24 250 West 55th Street</p> <p>New York, New York 10019</p> <p>(212) 836-8000</p> <p>samuel.lonerган@arnoldporter.com</p> <p>Representing the Defendant,</p> <p>Endo Pharmaceuticals</p> <p>BARTLIT BECK HERMAN PALENCHAR & SCOTT LLP</p> <p>BY: SHARON DESH, ESQUIRE</p> <p>Courthouse Place</p> <p>54 West Hubbard Street, Suite 300</p> <p>Chicago, Illinois 60654</p> <p>(312) 494-4400</p> <p>sharon.desh@bartlit-beck.com</p> <p>Representing the Defendant,</p> <p>The Walgreens Company</p>
Page 3	Page 5
<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 COVINGTON & BURLING LLP</p> <p>4 BY: EMILY KVESELIS, ESQUIRE</p> <p>5 850 Tenth Street, NW</p> <p>6 Suite 856N</p> <p>7 Washington, DC 20001</p> <p>8 202.662.5000</p> <p>9 ekveselis@cov.com</p> <p>10 Representing the Defendant,</p> <p>11 McKesson Corporation</p> <p>12</p> <p>13 MARCUS & SHAPIRA LLP</p> <p>14 BY: JAMES F. ROSENBERG, ESQUIRE</p> <p>15 One Oxford Centre</p> <p>16 35th Floor</p> <p>17 Pittsburgh, PA 15219</p> <p>18 412.338.4683</p> <p>19 rosenberg@marcus-shapira</p> <p>20 Representing the Defendant,</p> <p>21 HBC Service Company</p> <p>22</p> <p>23 JONES DAY</p> <p>24 BY: SARAH G. CONWAY, ESQUIRE</p> <p>555 South Flower Street</p> <p>Los Angeles, California 90071</p> <p>(213) 489-3939</p> <p>sgconway@jonesday.com</p> <p>Representing the Defendant,</p> <p>Walmart</p>	<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 VIA TELECONFERENCE:</p> <p>4</p> <p>5 LOCKE LORD LLP</p> <p>6 BY: BRANDAN MONTMINY, ESQUIRE</p> <p>7 2200 Ross Avenue</p> <p>8 Suite 2800</p> <p>9 Dallas, Texas 75201</p> <p>10 (214) 740-8000</p> <p>11 brandan.montminy@lockelord.com</p> <p>12 Representing the Defendant,</p> <p>13 Henry Schein Medical Systems, Inc.</p> <p>14</p> <p>15 ROPES & GRAY LLP</p> <p>16 BY: JESSICA SORICELLI, ESQUIRE</p> <p>17 BY: FEIFEI (ANDREA) REN, ESQUIRE</p> <p>18 1211 Avenue of the Americas</p> <p>19 New York, New York 10036</p> <p>20 (212) 596-9000</p> <p>21 Jessica.Soricelli@ropesgray.com</p> <p>22 Andrea.Ren@ropesgray.com</p> <p>23</p> <p>24 - and -</p> <p>BY: WILLIAM T. DAVISON, ESQUIRE</p> <p>Prudential Tower</p> <p>800 Boylston Street</p> <p>Boston, Massachusetts 02199</p> <p>(617) 951-7000</p> <p>William.Davison@ropesgray.com</p> <p>Representing the Defendant,</p> <p>Mallinckrodt</p>

Page 6	Page 8
<p>1 APPEARANCES: (Continued) 2 VIA TELECONFERENCE: 3 4 MORGAN LEWIS & BOCKIUS, LLP 5 BY: ELLIOT E. BROWN, ESQUIRE 6 1111 Pennsylvania Ave. NW 7 Washington, D.C. 20004 8 (202) 739-3000 9 elliot.brown@morganlewis.com 10 - and - 11 BY: MONICA C. PEDROZA, ESQUIRE 12 77 West Wacker Drive 13 Chicago, Illinois 60601 14 (312) 324-1000 15 Monica.pedroza@morganlewis.com 16 Representing the Defendants, 17 Teva Pharmaceuticals, Inc., 18 Cephalon, Inc., Watson 19 Laboratories, Actavis LLC, and 20 Actavis Pharma, Inc 21 22 JACKSON KELLY PLLC 23 BY: SAMANTHA M. D'ANNA, ESQUIRE 24 500 Lee Street East Suite 1600 Charleston, WV 25301 (304) 340-1347 samantha.danna@jacksonkelly.com Representing the Defendant, Miami-Luken, Inc.</p>	<p>1 - - - 2 I N D E X 3 - - - 4 5 Testimony of: DAVID MAY 6 By Mr. Pifko 13 7 8 - - - 9 E X H I B I T S 10 - - - 11 12 NO. DESCRIPTION PAGE 13 AmerisourceBergen-May 14 Exhibit-1 ABDCMDL 151803-804 13 15 AmerisourceBergen-May 16 Exhibit-2 Masters Pharmaceutical Versus 17 DEA Court Opinion, 18 861.F. 3rd, 206, 2017 from 19 The DC Circuit 39 20 AmerisourceBergen-May 21 Exhibit-3 ABDCMDL 00156582-84 45 22 AmerisourceBergen-May 23 Exhibit-4 ABDCMDL 00274105-118 116 24 AmerisourceBergen-May Exhibit-5 ABDCMDL 00250024-063 153 AmerisourceBergen-May Exhibit-6 ABDCMDL 00158544 159 AmerisourceBergen-May Exhibit-7 ABDCMDL 00168453-455 178</p>
Page 7	Page 9
<p>1 APPEARANCES: (Continued) 2 VIA TELECONFERENCE: 3 4 ZUCKERMAN SPAEDER LLP 5 BY: VANESSA I. GARCIA, ESQUIRE 6 485 Madison Avenue 7 10th Floor 8 New York, New York 10022 9 (212) 704-9600 10 vgarcia@zuckerman.com 11 Representing the Defendant, 12 CVS Pharmacy 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>11 ALSO PRESENT: David Lane, Videographer Zac Hone, Trial Technician</p>	<p>1 - - - 2 E X H I B I T S 3 - - - 4 5 NO. DESCRIPTION PAGE 6 AmerisourceBergen-May 7 Exhibit-8 ABDCMDL 00158342 196 8 AmerisourceBergen-May 9 Exhibit-9 ABDCMDL 00216332-33 182 10 AmerisourceBergen-May 11 Exhibit-10 ABDCMDL 00159072 248 12 AmerisourceBergen-May 13 Exhibit-11 ABDCMDL 00140843-44 268 14 AmerisourceBergen-May 15 Exhibit-12 ABDCMDL 00159415-16 270 16 AmerisourceBergen-May 17 Exhibit-13 Tab Printout; 18 Sales Assignment 277 19 AmerisourceBergen-May 20 Exhibit-14 ABDCMDL 00002232 285 21 AmerisourceBergen-May 22 Exhibit-15 Tab Printout 314 23 AmerisourceBergen-May 24 Exhibit-16 ABDCMDL 00156364 320 AmerisourceBergen-May Exhibit-17 Tab Printout 322 AmerisourceBergen-May Exhibit-18 Tab Printout 322</p>

<div>Page 10</div> <div>1-3 EXHIBITS 1-3</div> <div>4</div> <table><tr><th>NO.</th><th>DESCRIPTION</th><th>PAGE</th></tr><tr><td>5</td><td>AmerisourceBergen-May</td><td></td></tr><tr><td>6</td><td>Exhibit-19 ABDCMDL 00159841</td><td>325</td></tr><tr><td>7</td><td>AmerisourceBergen-May</td><td></td></tr><tr><td>8</td><td>Exhibit-20 ABDCMDL 00142341-345</td><td>342</td></tr><tr><td>9</td><td></td><td></td></tr><tr><td>10</td><td></td><td></td></tr><tr><td>11</td><td></td><td></td></tr><tr><td>12</td><td></td><td></td></tr><tr><td>13</td><td></td><td></td></tr><tr><td>14</td><td></td><td></td></tr><tr><td>15</td><td></td><td></td></tr><tr><td>16</td><td></td><td></td></tr><tr><td>17</td><td></td><td></td></tr><tr><td>18</td><td></td><td></td></tr><tr><td>19</td><td></td><td></td></tr><tr><td>20</td><td></td><td></td></tr><tr><td>21</td><td></td><td></td></tr><tr><td>22</td><td></td><td></td></tr><tr><td>23</td><td></td><td></td></tr><tr><td>24</td><td></td><td></td></tr></table>			NO.	DESCRIPTION	PAGE	5	AmerisourceBergen-May		6	Exhibit-19 ABDCMDL 00159841	325	7	AmerisourceBergen-May		8	Exhibit-20 ABDCMDL 00142341-345	342	9			10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			<div>Page 12</div> <div>1-3 (It is hereby stipulated and agreed by and among counsel that sealing, filing and certification are waived; and that all objections, except as to the form of the question, will be reserved until the time of trial.) 1-3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>VIDEO TECHNICIAN: We are now on the record. My name is David Lane, videographer for Golkow Litigation Services. Today's date is August 4th, 2018. Our time is 9:01 a.m.</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>This deposition is taking place in Philadelphia, Pennsylvania, in the matter of National Prescription Opiate Litigation. Our deponent today is David May.</div> <div>22</div> <div>23</div> <div>24</div> <div>Our counsel will be noted on the stenographic record. The court reporter today is Amanda</div>		
NO.	DESCRIPTION	PAGE																																																																		
5	AmerisourceBergen-May																																																																			
6	Exhibit-19 ABDCMDL 00159841	325																																																																		
7	AmerisourceBergen-May																																																																			
8	Exhibit-20 ABDCMDL 00142341-345	342																																																																		
9																																																																				
10																																																																				
11																																																																				
12																																																																				
13																																																																				
14																																																																				
15																																																																				
16																																																																				
17																																																																				
18																																																																				
19																																																																				
20																																																																				
21																																																																				
22																																																																				
23																																																																				
24																																																																				
<div>Page 11</div> <div>1-3 DEPOSITION SUPPORT INDEX 1-3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>Direction to Witness Not to Answer</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <table><tr><th>Page Line</th><th>Page Line</th><th>Page Line</th></tr><tr><td>76</td><td>7</td><td></td></tr><tr><td>122</td><td>1</td><td></td></tr><tr><td>123</td><td>21</td><td></td></tr><tr><td>220</td><td>17</td><td></td></tr></table> <div>Request for Production of Documents</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <table><tr><th>Page Line</th><th>Page Line</th><th>Page Line</th></tr><tr><td>None</td><td></td><td></td></tr></table> <div>Stipulations</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <table><tr><th>Page Line</th><th>Page Line</th><th>Page Line</th></tr><tr><td>10</td><td>1</td><td></td></tr></table> <div>Question Marked</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <table><tr><th>Page Line</th><th>Page Line</th><th>Page Line</th></tr><tr><td>None</td><td></td><td></td></tr></table>			Page Line	Page Line	Page Line	76	7		122	1		123	21		220	17		Page Line	Page Line	Page Line	None			Page Line	Page Line	Page Line	10	1		Page Line	Page Line	Page Line	None			<div>Page 13</div> <div>1-3 Miller and will now swear in our witness. 1-3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>DAVID MAY, after having been duly sworn, was examined and testified as follows:</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>VIDEO TECHNICIAN: Please begin.</div> <div>EXAMINATION</div> <div>BY MR. PIFKO:</div> <div>Q. Good morning, Mr. May.</div> <div>A. Good morning.</div> <div>Q. My name is Mark Pifko. I'm an attorney for the plaintiffs in this matter. I'm handing you what's marked as Exhibit Number 1.</div> <div>(Whereupon, AmerisourceBergen-May Exhibit-1, ABDCMDL 151803-804, was marked for identification.)</div>																																
Page Line	Page Line	Page Line																																																																		
76	7																																																																			
122	1																																																																			
123	21																																																																			
220	17																																																																			
Page Line	Page Line	Page Line																																																																		
None																																																																				
Page Line	Page Line	Page Line																																																																		
10	1																																																																			
Page Line	Page Line	Page Line																																																																		
None																																																																				

Page 14

1 - - -
2 BY MR. PIFKO:
3 Q. This is an e-mail, Bates
4 labeled ABDCMDL 151803 through 804.
5 There's various exchanges;
6 you're one of the people on the
7 exchanges. They are dated January 14th,
8 2016.
9 Please take a minute to
10 review that and let me know when you're
11 done.
12 A. Sure. Thank you.
13 Q. Have you seen this before?
14 A. I have.
15 Q. When was the last time you
16 saw this?
17 A. It would have been on the
18 date that is indicated by the e-mail,
19 which would be, I guess, January 14th,
20 2016.
21 Q. Do you recall this
22 discussion?
23 A. I recall this exchange, yes.
24 Q. Is this a true and correct

Page 15

1 copy of the communications reflected
2 here?
3 A. Yes, it is.
4 Q. I'd like to direct your
5 attention to the first page. About
6 halfway down the page, there's an e-mail
7 from you. It says, 3:16 p.m. to Sharon
8 Hartman.
9 Do you see that part?
10 A. I do.
11 Q. There's a line you say right
12 there, If an order is deemed suspicious,
13 it can never be shipped.
14 Do you see that?
15 A. I do.
16 Q. Why do you say that?
17 MR. NICHOLAS: Object to the
18 form.
19 Go ahead.
20 THE WITNESS: Under our
21 program and our policy and our
22 understanding of the regulation,
23 and what the regulator expects
24 from us, is when we declare an

Page 16

1 order as suspicious, it's
2 permanently rejected and never
3 shipped.
4 BY MR. PIFKO:
5 Q. So if you -- it's based on
6 your understanding of the legal
7 requirements that if you identify an
8 order as suspicious, you cannot ship it,
9 correct?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: It's my
13 understanding of the law and the
14 regulation and the expectation of
15 the regulator.
16 BY MR. PIFKO:
17 Q. To be clear, that if an
18 order is suspicious, you cannot ship it,
19 correct?
20 A. Correct.
21 Q. Do you know what these
22 direct shipments are?
23 A. I have some knowledge of the
24 direct shipments.

Page 17

1 In reading the back -- or,
2 actually, the beginning of the e-mail
3 chain, there is a refresher on here that
4 explains what direct ships are.
5 Q. This is a situation where
6 the order goes through
7 AmerisourceBergen's order process but
8 it's shipped directly from the
9 manufacturer to the customer, correct?
10 A. Actually, my understanding
11 of the direct ship is an order is placed
12 by the customer directly to the
13 manufacturer, AmerisourceBergen has no
14 visibility to the placement of that
15 order.
16 The order is then shipped
17 from the manufacturer directly to the
18 customer, and we have no visibility of
19 that process.
20 What we do have visibility
21 into is the financial transaction after
22 it's completed. And our role in the
23 process is simply billing the
24 transaction.

Page 18

[REDACTED]

Page 20

[REDACTED]

Page 19

[REDACTED]

Page 21

[REDACTED]

Page 22

[REDACTED]

Page 23

[REDACTED]

MR. NICHOLAS: Before we go on, I just want to make clear for the record that -- or confirm that

Page 24

1 we're talking about the period
2 from 2015 forward; is that
3 correct?
4 MR. PIFKO: I'll get into
5 some dates. I'm going to ask him.
6 BY MR. PIFKO:
7 Q. What is --
8 MR. NICHOLAS: I know. But
9 I just want to make sure the
10 testimony --
11 MR. PIFKO: The record is it
12 is. You can't go back, he's
13 already answered the question.
14 MR. NICHOLAS: It's unclear
15 and that's why I'm trying to
16 clarify.
17 MR. PIFKO: Well, it is what
18 it is. We can't fix it
19 retroactively.
20 MR. NICHOLAS: Sure we can.
21 MR. PIFKO: No, we can't.
22 MR. NICHOLAS: You don't
23 want to.
24 BY MR. PIFKO:

Page 25

[REDACTED]

20 BY MR. PIFKO:
21 Q. You understand that you're
22 designated to be the company's
23 representative to testify about certain
24 topics today, correct?

Page 26

Page 28

1 A. I do.
2 Q. And there's a time period
3 for which you're designated to provide
4 company testimony, correct?

A. Yes.

Q. And that's 2015 to what?

A. The present.

Category	Percentage
1	~10%
2	~10%
3	~10%
4	~10%
5	~10%
6	~10%
7	~10%
8	~10%
9	~10%
10	~10%
11	~10%
12	~10%
13	~10%
14	~10%
15	~10%
16	~10%
17	~10%
18	~10%
19	~10%
20	~10%
21	~10%
22	~10%
23	~10%
24	~10%
25	~10%
26	~10%
27	~10%
28	~10%
29	~10%
30	~10%
31	~10%
32	~10%
33	~10%
34	~10%
35	~10%
36	~10%
37	~10%
38	~10%
39	~10%
40	~10%
41	~10%
42	~10%
43	~10%
44	~10%
45	~10%
46	~10%
47	~10%
48	~10%
49	~10%
50	~10%
51	~10%
52	~10%
53	~10%
54	~10%
55	~10%
56	~10%
57	~10%
58	~10%
59	~10%
60	~10%
61	~10%
62	~10%
63	~10%
64	~10%
65	~10%
66	~10%
67	~10%
68	~10%
69	~10%
70	~10%
71	~10%
72	~10%
73	~10%
74	~10%
75	~10%
76	~10%
77	~10%
78	~10%
79	~10%
80	~10%
81	~10%
82	~10%
83	~10%
84	~10%
85	~10%
86	~10%
87	~10%
88	~10%
89	~10%
90	~10%
91	~10%
92	~10%
93	~10%
94	~10%
95	~10%
96	~10%
97	~10%
98	~10%
99	~10%
100	~10%

[illegible]

Page 27

Page 29

[illegible]

11 A. I can't say specifically.

12 Q. When you joined the company,
13 you took it upon yourself to familiarize
14 yourself with certain past practices of
15 the company?

16 A. I did.

17 Q. I'm handing you now what was
18 marked yesterday as Exhibit Zimmerman-1.

19 It is a copy of the first
20 30(b)(6) notice in this case to

21 AmerisourceBergen. Take a minute to
22 review that and let me know when you're
23 ready to discuss it.

24 I just have a couple of

Page 30

1 simple questions, but take your time.
2 MR. NICHOLAS: While he's
3 looking at the document, just to
4 clarify the record, Mr. May is
5 designated as a 30(b)(6) witness
6 to testify through May 29th of
7 2018.
8 THE WITNESS: Okay.
9 BY MR. PIFKO:
10 Q. Okay. If you'd go to Page
11 6. Tell me when you're there.
12 A. Yes, I'm there.
13 Q. It's got some letters, A,
14 and it continues on through the next
15 page, A through O.
16 A. Yes.
17 Q. Have you reviewed these
18 topics?
19 A. I have.
20 Q. When was the first time that
21 you saw these topics?
22 A. They were presented to me by
23 counsel.
24 Q. When was the first time?

Page 31

1 A. Oh, when? Three weeks ago,
2 possibly, approximately.
3 Q. And do you understand that
4 you're designated to speak on all of
5 these topics from January 1st, 2015 to
6 May 29th, 2018?
7 MR. NICHOLAS: We covered
8 yesterday that that's with the
9 exception of letter O.
10 THE WITNESS: Yes.
11 BY MR. PIFKO:
12 Q. With the exception of letter
13 O, you're not here to testify about that?
14 MR. NICHOLAS: Well, we've
15 agreed that he's not here to
16 testify about that.
17 MR. PIFKO: I'm asking the
18 witness.
19 MR. NICHOLAS: Then I'll
20 object to the question.
21 THE WITNESS: Well,
22 apparently there's an agreement,
23 so I won't be talking about O.
24 BY MR. PIFKO:

Page 32

1 Q. Did you undertake any effort
2 to familiarize yourself with the topics
3 in O?
4 A. I have not.
5 Q. But you are prepared to talk
6 about A through N today, from the time
7 period from January 1st, 2015 to May
8 29th, 2018?
9 A. I am.
10 Q. You were a DEA employee for
11 some period of time, correct?
12 A. Yes.
13 Q. How long did you work for
14 the DEA?
15 A. I started working for DEA
16 while I was in college, so over 30 years.
17 Q. What -- when did you first
18 start? What was the date when you first
19 started working for the DEA?
20 A. It was approximately June of
21 1982, as a student intern. And I started
22 my career as an agent in 1985, and was
23 employed as an agent until I retired in
24 2014.

Page 33

1 Q. When you retired in 2014,
2 what was the position you held at the
3 DEA?
4 A. I was the assistant special
5 agent in charge of the Atlanta field
6 division.
7 Q. Was that the highest
8 position that you held when you were at
9 the DEA?
10 A. I had an equivalent grade
11 but with a different title, assistant
12 regional director in Europe, Africa and
13 the Middle East. I also had a temporary
14 grade at the same level while assigned to
15 DEA headquarters as an acting section
16 chief of our Europe and Middle Eastern
17 section.
18 Q. When were you acting section
19 chief?
20 A. It was during my assignment
21 to DEA headquarters. So that would have
22 been upon my return from Paris. I have
23 to sort the years out.
24 So '86 to '91, I was

<p style="text-align: right;">Page 34</p> <p>1 assigned to the New York field division; 2 from '91 to '93, I was assigned to the 3 Marseilles resident office in France; 4 from '93 to '96, I was assigned to the 5 Paris country office. From 1996 to 1999, 6 I was assigned to DEA headquarters, that 7 was the acting section chief; from 1999 8 to 2002, I was handed a program, a 9 congressionally funded program, targeting 10 drug trafficking organizations across the 11 country. That ended in 2002, where I 12 became the head of the drug task force in 13 the city of Charlotte, North Carolina. 14 From that, I was assigned Rome, as 15 assistant regional director. And then 16 finally to Atlanta. 17 Q. And after concluding your 18 employment with the DEA in 2014, you then 19 went to join AmerisourceBergen, correct? 20 A. Correct. 21 Q. And what was your title when 22 you joined AmerisourceBergen? 23 A. Senior director of diversion 24 control.</p>	<p style="text-align: right;">Page 36</p> <p>1 specifically say that they will 2 not approve any specific programs 3 being run by regulators. 4 BY MR. PIFKO: 5 Q. And what do you mean by 6 that? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: In terms of 10 the -- 11 MR. NICHOLAS: And to the 12 scope. 13 Go ahead. 14 THE WITNESS: In terms of 15 the context to your question, I've 16 seen written documents by DEA, 17 including in their guidance 18 letters around the 2006, 2007 time 19 frame, where they say that they 20 will not approve specific systems 21 or programs that regulators have 22 in place. 23 That's my only context for 24 that question.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What's your title now? 2 A. Vice president of diversion 3 control and security. 4 Q. Did you have any positions 5 in between those two positions? 6 A. I did not. 7 Q. Were your job 8 responsibilities essentially the same in 9 those two positions? 10 A. They are slightly different. 11 Q. What are the differences? 12 A. I assumed the security and 13 investigations profile in addition to the 14 diversion control profile within 15 corporate security and regulatory 16 affairs. 17 Q. Based on your experience 18 with the DEA, does the DEA tell companies 19 it regulates whether their practices are 20 in compliance with the law? 21 MR. NICHOLAS: Object to the 22 form. Object to the scope. 23 THE WITNESS: I have seen 24 statements by DEA where they</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. PIFKO: 2 Q. You said that they won't 3 approve specific systems or programs that 4 regulators have in place. 5 Do you mean that the 6 regulated have in place? 7 A. I do. 8 Q. So what you're saying is the 9 DEA does not approve the specific system 10 or program that a company may implement 11 in connection with regulations that DEA 12 enforces, correct? 13 MR. NICHOLAS: Object to the 14 form. Object to the scope. 15 You're outside of the witness's 16 time frame here, by a lot. 17 THE WITNESS: Again, the 18 only context I can put around this 19 is my review of documents from DEA 20 where -- and I will rely upon what 21 the document says, in terms of 22 what my understanding is, that 23 DEA -- DEA's position around this 24 issue.</p>

<p style="text-align: right;">Page 38</p> <p>1 BY MR. PIFKO: 2 Q. Okay. And what is your 3 understanding about what DEA's position 4 is? 5 MR. NICHOLAS: Object to the 6 form. Object to the scope. Same 7 objections. 8 THE WITNESS: Again, I would 9 rely upon the content of that 10 written guidance specifically that 11 DEA has in those documents that 12 they released; it was either 2006 13 or 2007. I believe it was 14 actually a 2007 document, where 15 they make a statement relative to 16 their not approving specific 17 programs of the regulated 18 community. 19 BY MR. PIFKO: 20 Q. In your experience as a DEA 21 agent for -- how many years? 22 A. Approximately 30. 23 Q. -- for 30 years, did you 24 ever tell a company, or somebody that was</p>	<p style="text-align: right;">Page 40</p> <p>1 BY MR. PIFKO: 2 Q. I'm handing you what's 3 marked as Exhibit-2. 4 MR. PIFKO: He's going to 5 hand it to you in just a second. 6 For the record, it's a copy 7 of the Masters Pharmaceutical 8 versus DEA court opinion, 861 F.3d 9 206, 2017, from the DC circuit. 10 BY MR. PIFKO: 11 Q. It's got a couple paragraphs 12 highlighted that we wanted to call your 13 attention to. But take a minute to 14 review it. 15 Just, my first question 16 would just be that, have you seen this 17 opinion before? 18 MR. NICHOLAS: Can I just -- 19 what we're looking at on the 20 screen is not the same as what's 21 in front of him. 22 MR. PIFKO: It should be. 23 MR. NICHOLAS: It looks like 24 a different document.</p>
<p style="text-align: right;">Page 39</p> <p>1 within your regulatory authority, that 2 what they were doing was approved? 3 MR. NICHOLAS: Object to the 4 form. Object to the scope. 5 THE WITNESS: So the 6 majority of my career, almost all 7 of my career, was on the 8 enforcement side of the agency. 9 And I had little to no interaction 10 with the regulated community. 11 BY MR. PIFKO: 12 Q. You were out there chasing 13 drug dealers? 14 A. I was out there 15 investigating drug trafficking 16 organizations, yes. 17 - - - 18 (Whereupon, 19 AmerisourceBergen-May Exhibit-2, 20 Masters Pharmaceutical Versus DEA 21 Court Opinion, 861 F.3d 206, 2017 22 from the DC Circuit, was marked 23 for identification.) 24 - - -</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. PIFKO: Let's go off the 2 record while we fix this. 3 VIDEO TECHNICIAN: Going off 4 the record. 9:33 a.m. 5 - - - 6 (Whereupon, a discussion off 7 the record occurred.) 8 - - - 9 VIDEO TECHNICIAN: We're 10 back on record. The time is 9:35 11 a.m. 12 BY MR. PIFKO: 13 Q. Okay, Mr. May, we've 14 resolved, and it appears that you have a 15 complete copy of the Masters 16 Pharmaceutical decision in front of you. 17 Please take a moment to 18 review it and let me know when you're 19 done. 20 My first question is just if 21 you've seen this before? 22 A. Yes, I've seen this before. 23 Q. When was the first time you 24 saw this?</p>

Page 42

1 A. I've seen it recently in
2 preparation for today. And I may have
3 seen it at other times during the course
4 of my work, but I don't recall
5 specifically when that was.
6 Q. Okay. I'd like to direct
7 you to Page 7, if you use the very bottom
8 of the page. There's a paragraph with a
9 bracketed 2 there.
10 Do you see that paragraph at
11 the bottom on the right?
12 A. I do.
13 Q. If you go a little bit down
14 it says -- there's a sentence that says,
15 The security requirement.
16 Do you see that part?
17 A. I do.
18 Q. I'm going to read that to
19 you.
20 The security requirement, in
21 quotes, at the heart of this case
22 mandates that distributors, quote, design
23 and operate a system to identify
24 suspicious orders of controlled

Page 43

1 substances and report those orders to DEA
2 (the reporting requirement) 21CFR Section
3 1301.74(b).
4 Do you see that?
5 A. I do.
6 Q. Do you understand that
7 AmerisourceBergen is bound by the
8 reporting requirement?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: So I
12 understand that AmerisourceBergen,
13 as a wholesale distributor,
14 registered as a wholesale
15 distributor, is bound by certain
16 provisions of The Controlled
17 Substances Act, as well as the
18 implementing regulations.
19 And so in terms of any
20 requirements imposed upon us, I
21 would refer to the CFR as well as
22 The Controlled Substance Act.
23 BY MR. PIFKO:
24 Q. As the vice president of

Page 44

1 diversion control at the company, you're
2 responsible for the company's diversion
3 control efforts?
4 A. I am.
5 Q. Do you understand that
6 the -- in discharging your duties, that
7 the company is bound by the law as set
8 forth in this decision?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: I understand
12 in my role and my responsibility
13 is one to meet the requirements of
14 The Controlled Substances Act in
15 implementing regulations that are
16 relevant to the wholesale
17 distributor. And I rely upon
18 those, as opposed to this
19 particular case.
20 BY MR. PIFKO:
21 Q. But you took it upon
22 yourself, in connection with your role as
23 the head of the diversion control
24 division of the company, to familiarize

Page 45

1 yourself with this case when it came out?
2 MR. NICHOLAS: Object to the
3 form.
4 THE WITNESS: At one point I
5 reviewed this document, and more
6 recently I reviewed it again.
7 - - -
8 (Whereupon,
9 AmerisourceBergen-May Exhibit-3
10 ABDCMDL 00156582-84, was marked
11 for identification.)
12 - - -
13 BY MR. PIFKO:
14 Q. I'm handing you what has
15 been marked as Exhibit-3. Please take a
16 minute to look at this and let me know
17 when you're done.
18 For the record, it's some
19 e-mails, dated August 2nd, 2017. It's
20 Bates labeled ABDCMDL 00156582 through
21 84.
22 A. Okay.
23 Q. Are you familiar with this
24 document?

Page 46

1 A. I am.
2 Q. Is this a true and correct
3 copy of the discussion reflected in this
4 document?
5 A. Yes, it is.
6 Q. The first e-mail at the
7 bottom is dated July 13th -- sorry, to be
8 clear, so you know where I'm talking,
9 it's on the 156583. It's an e-mail from
10 you to Ruth Miller and Kristin Freitas,
11 dated July 13, 2017.
12 Do you see that?
13 A. I do.
14 Q. The subject of the -- the
15 substance. The e-mail is on the next
16 page, but do you see the header on the
17 page I just referenced?
18 A. Yes.
19 Q. Looking back to Exhibit-2,
20 the Masters decision, you see that on the
21 first page it was decided on June 30th,
22 2017.
23 Do you agree?
24 A. I'm sorry. You just lost

Page 47

1 me.
2 Q. Go back to Exhibit-2, the
3 decision.
4 A. Yes. Thank you.
5 Q. You see that it was
6 decided -- on the first page on the left,
7 it was decided June 30th, 2017. Agreed?
8 A. I see that. Thank you.
9 Q. And so you write to Ruth
10 Miller and Christine Freitas or Kristin
11 Freitas about two weeks later, agree?
12 A. Yes.
13 Q. And you say, Ruth, Kristin,
14 sorry I could not be on the RAC call
15 today, as I was traveling.
16 RAC is regulatory affairs
17 committee, correct?
18 A. I'm not precisely certain
19 what it stands for.
20 Q. That's a committee that you
21 serve on?
22 A. I don't actually serve on
23 this committee.
24 Q. It's an ad hoc committee?

Page 48

1 A. I'm familiar with the term.
2 I just don't know precisely what -- the
3 initials.
4 Q. But that's a committee
5 that's affiliated with the Healthcare
6 Distribution Alliance, correct?
7 A. Yes, yes.
8 Q. And you have some
9 involvement in interacting with the
10 Healthcare Distribution Alliance?
11 A. I do.
12 Q. Okay. Going back to this
13 e-mail, you say, I have been meaning to
14 reach out to you, as I am concerned with
15 some of the language and reasoning found
16 in the appellate court's recent decision
17 in the Masters case, particularly
18 surrounding suspicious orders.
19 Do you see that?
20 A. I do.
21 Q. What were your concerns
22 about the appellate court's recent
23 decision in the Masters case with respect
24 to suspicious orders?

Page 49

1 A. To the best of my
2 recollection, without seeing any other
3 documents, other than what's in front of
4 me here, there was information that was
5 new information in the appellate court
6 decision.
7 There was some terminology
8 which I had never seen before in any of
9 the regulations or in The Controlled
10 Substance Act. And that caused me to be
11 concerned that there was this new
12 language that wasn't in the law or
13 regulation. And that was a general
14 description of my concern.
15 Q. What language was that?
16 A. There was language relative
17 to shipping requirement. And I had never
18 seen the term, in all of my work at ABC,
19 up until that point in my review of the
20 regulation and the law, anything about
21 shipping requirement.
22 So that would be just an
23 example. There may have been other
24 concerns that I had.

Page 50

1 Q. And it was your concern
2 because you had never seen the phrase
3 "shipping requirement"?

4 MR. NICHOLAS: Object to the
5 form. Asked and answered.

6 THE WITNESS: My concern was
7 that I had never seen the term
8 "shipping requirement" in the
9 applicable regulations or the law.
10 And that its first appearance that
11 I recall seeing was in the
12 decision.

13 BY MR. PIFKO:

14 Q. I'm going to hand you
15 another document that was marked
16 yesterday Exhibit-6.

17 For the record, it's a
18 series of letters from the Department of
19 Justice, DEA administration, which we
20 call the Dear Registrant letters.

21 Take a minute to review
22 those.

23 MR. NICHOLAS: While he's
24 reviewing them, just so the record

Page 51

1 is clear, since you're about to
2 ask him about documents that
3 precede the period for which he is
4 designated to testify as a
5 30(b)(6) witness, he is now
6 testifying in his individual
7 capacity.

8 MR. PIFKO: We have to make
9 that judgment based on the
10 question. But your position is
11 noted.

12 BY MR. PIFKO:

13 Q. Are you familiar with these
14 letters?

15 A. I am.

16 Q. If I call them the Dear
17 Registrant letters, is that a term that
18 you're familiar with?

19 A. Yes.

20 Q. Okay. When was the first
21 time that you've seen these letters?

22 A. I'm not precisely sure I
23 could provide you a date. It's been some
24 time.

Page 52

1 Q. Did you review these letters
2 upon joining AmerisourceBergen?

3 A. Yes.

4 Q. And that was part of your
5 effort to familiarize yourself with
6 activity governing the diversion control
7 department for which you were
8 responsible?

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: Yes.

12 BY MR. PIFKO:

13 Q. So there's four letters in
14 this packet. I want to turn your
15 attention to the earliest of these
16 letters, dated September 27th, 2006.

17 For the record, that letter
18 covers ABDCMDL 00269691 through 694.

19 Tell me when you're there.

20 A. I'm there, yes.

21 Q. Are you familiar with this
22 letter?

23 A. Yes.

24 Q. Let's turn to the second

Page 53

1 page of this letter.

2 About two-thirds of the way
3 down it says, Thus, in addition to
4 reporting all suspicious orders, a
5 distributor has a statutory
6 responsibility to exercise due diligence
7 to avoid filling suspicious orders that
8 might be diverted into other than
9 legitimate medical, scientific and
10 industrial channels.

11 Do you see that?

12 A. I do.

13 Q. Failure to exercise such due
14 diligence could, as circumstances
15 warrant, provide a statutory basis for
16 revocation or suspension of a
17 distributor's registration.

18 Do you see that?

19 MR. NICHOLAS: Is that a
20 question?

21 THE WITNESS: I do see it,
22 yes.

23 BY MR. PIFKO:

24 Q. Do you have an understanding

Page 54

1 that that is saying, if you identify an
2 order as suspicious, you should not ship
3 it?

4 MR. NICHOLAS: Object to the
5 form. In addition to which the
6 witness is being asked about a
7 topic for which he has not been
8 designated as a 30(b)(6) deponent.
9 So I'll permit him to
10 answer, but he's only answering in
11 his individual capacity.
12 THE WITNESS: Could you
13 repeat your question?
14 BY MR. PIFKO:
15 Q. The sentence I just read --
16 A. Yes.
17 Q. -- my question is, do you
18 understand this to be saying that if you
19 identify an order as suspicious, you
20 cannot ship it?
21 MR. NICHOLAS: Same
22 objection.
23 THE WITNESS: So in current
24 state, under our program, if we

Page 55

1 identify an order as suspicious,
2 we don't ship. It's rejected,
3 it's not shipped and it's reported
4 to DEA.
5 BY MR. PIFKO:
6 Q. Okay. I didn't ask you
7 about what your program was. I'm asking
8 you about this letter right now.
9 And my question is, do you
10 understand this language here to be
11 saying that if an order is deemed to be
12 suspicious, it cannot be shipped?
13 MR. NICHOLAS: Same
14 objection.
15 THE WITNESS: And, again, I
16 view these letters not as I view
17 the law and the regulation. It's
18 additional information that's
19 provided by DEA.
20 My understanding of the law
21 and regulation says that if we
22 identify an order as suspicious,
23 we should reject it and report it.
24 That's what we do at

Page 56

1 AmerisourceBergen.
2 BY MR. PIFKO:
3 Q. And I just want to know if,
4 when you see this language, you
5 understand that that's what this language
6 is saying? It's saying, if you identify
7 an order as suspicious, do not ship it.
8 MR. NICHOLAS: Object to the
9 form. Same objection. Third time
10 you've asked him.
11 THE WITNESS: The law and
12 the regulation requires us to
13 reject or report suspicious
14 orders. They are, thereby, not
15 shipped.
16 If this says the same thing,
17 that -- and it agrees with the law
18 and the regulation, then I would
19 let the document stand on its own.
20 BY MR. PIFKO:
21 Q. That's your understanding of
22 the document?
23 MR. NICHOLAS: Object to the
24 form. He's answered the question

Page 57

1 four times.
2 MR. PIFKO: It's been asked.
3 It hasn't been answered.
4 MR. NICHOLAS: No, it has
5 been answered.
6 BY MR. PIFKO:
7 Q. I'm just trying to get --
8 sir, I'm just trying to get your
9 understanding of the document. I
10 appreciate your explanation of the law.
11 I'm just trying to get --
12 when you read this sentence, do you agree
13 that that's what it says? That's all I'm
14 asking you.
15 MR. NICHOLAS: Object to the
16 form. Object to the repeated
17 question, since he's answered it.
18 THE WITNESS: And, again, my
19 response would be the same.
20 That I rely on the
21 regulation and the law in terms of
22 how we carry out our
23 responsibility relative to
24 suspicious orders. And at

<p style="text-align: right;">Page 58</p> <p>1 AmerisourceBergen, when we 2 identify a suspicious order, it's 3 rejected and reported to DEA. 4 BY MR. PIFKO: 5 Q. When you read this 6 sentence -- can you read this sentence to 7 me out loud, please? 8 A. Sure. 9 Q. I mean, that paragraph. 10 A. Sure. 11 MR. NICHOLAS: Can I have 12 the question repeated, please? 13 I'm sorry. 14 MR. PIFKO: I just asked him 15 to read the paragraph aloud. 16 MR. NICHOLAS: Okay. You 17 want him to read it out loud. 18 Go ahead. 19 THE WITNESS: Thus, in 20 addition to reporting all 21 suspicious orders, a distributor 22 has a statutory responsibility to 23 exercise due diligence to avoid 24 filling suspicious orders that</p>	<p style="text-align: right;">Page 60</p> <p>1 what this means? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: Again, in 5 terms of suspicious orders, my 6 understanding of the law and 7 regulation requires us to reject 8 them, cancel them, and report them 9 to DEA. 10 BY MR. PIFKO: 11 Q. And that's what this is 12 saying here, correct? 13 MR. NICHOLAS: Object to the 14 form. The witness has answered 15 this a number of times. Now 16 you're just trying to put words in 17 his mouth. So I'll object. 18 THE WITNESS: Again, I rely 19 on the law and the regulation 20 relative to suspicious orders. 21 MR. PIFKO: The record will 22 reflect that the witness is 23 unwilling to answer my question. 24 MR. NICHOLAS: Let the</p>
<p style="text-align: right;">Page 59</p> <p>1 might be diverted into other than 2 legitimate, medical, scientific 3 and industrial channels. Failure 4 to exercise such due diligence 5 could, as circumstances warrant, 6 provide a statutory basis for 7 revocation or suspension of a 8 distributor's registration. 9 BY MR. PIFKO: 10 Q. What does that mean to you? 11 MR. NICHOLAS: Object to the 12 form. Asked and answered five 13 times. Outside the scope. 14 THE WITNESS: Again, I 15 don't -- I don't think I'm the 16 right person to try to interpret 17 what the meaning is of this 18 sentence that was written by 19 somebody else. 20 And I would rely upon my 21 previous answer relative to 22 suspicious orders. 23 BY MR. PIFKO: 24 Q. You're unable to tell me</p>	<p style="text-align: right;">Page 61</p> <p>1 record reflect that the witness 2 has answered the question. And 3 the commentary about it is totally 4 inappropriate. 5 BY MR. PIFKO: 6 Q. Staying on this document, I 7 want to direct your attention to the 8 letter dated December 27th, 2007. That's 9 ABCMDL 00269685. 10 Are you there? 11 A. Yes. 12 Q. Second paragraph, at the 13 bottom, it says, Accordingly, DEA does 14 not approve or otherwise endorse any 15 specific system for reporting suspicious 16 orders. Past communications with DEA, 17 whether implicit or explicit, that could 18 be construed as approval of a particular 19 system for reporting suspicious orders 20 should no longer be taken to mean that 21 DEA approves a specific system. 22 Do you see that? 23 A. I do. 24 Q. When I asked you earlier</p>

Page 62

1 about DEA approving conduct by regulated
2 entities, is that what you were referring
3 to?
4 A. Yes.
5 Q. And that's consistent with
6 your understanding of the DEA's policy?
7 MR. NICHOLAS: Object to the
8 form. Outside the scope. He's
9 testifying as an individual.
10 THE WITNESS: Relative to it
11 being consistent with DEA policy,
12 I would have to say that I'm not
13 familiar with DEA's specific
14 written policy around this issue.
15 And I -- my context of my
16 response was strictly relative to
17 this particular statement.
18 BY MR. PIFKO:
19 Q. When you joined
20 AmerisourceBergen and reviewed these
21 letters to familiarize yourself with
22 them, did you understand this to be DEA's
23 position concerning the activities of
24 preventing diversion?

Page 63

1 MR. NICHOLAS: Object to the
2 form. Outside the scope.
3 THE WITNESS: I'm not sure I
4 understand your question. If you
5 wouldn't mind repeating it, thank
6 you.
7 BY MR. PIFKO:
8 Q. I'm just asking, basically,
9 when you came into the company in 2014 --
10 and you reviewed these letters, correct?
11 A. Yes.
12 Q. Okay. And you saw this,
13 this provision, right?
14 A. Yes.
15 Q. And you understood, when you
16 joined the company, that this was the
17 DEA's position, correct?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Again, I
21 familiarized myself with all of
22 these documents, including this
23 one statement. And I would let
24 the statement speak for itself.

Page 64

1 BY MR. PIFKO:
2 Q. But you understood it,
3 correct?
4 MR. NICHOLAS: Object to the
5 form.
6 THE WITNESS: I read all of
7 the documents.
8 BY MR. PIFKO:
9 Q. Did you understand them?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I'm not sure I
13 understand your question.
14 Did I understand the written
15 documents?
16 BY MR. PIFKO:
17 Q. Yes.
18 A. To the extent that I can
19 read the documents, yes, I can read the
20 documents.
21 Q. And you understood them when
22 you read them?
23 MR. NICHOLAS: Object to the
24 form.

Page 65

1 THE WITNESS: I believe I
2 can read the documents, yes.
3 BY MR. PIFKO:
4 Q. And when you read them, you
5 can understand them?
6 A. I have a reading
7 compensation, I guess.
8 MR. NICHOLAS: Hold on.
9 Object to the form.
10 BY MR. PIFKO:
11 Q. You read them and understand
12 them, correct? That's all I'm trying to
13 get -- you're saying "I read them." But
14 I just want to be clear that -- reading
15 and understanding are different things.
16 So when you read them, you
17 understood what you read?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: So when I read
21 a document, for reading
22 comprehension, I understand the
23 document. I guess that's why I
24 was a little confused.

<p style="text-align: right;">Page 66</p> <p>1 BY MR. PIFKO: 2 Q. No problem. It's part of 3 the deposition process that we have to be 4 clear about our words sometimes. 5 A. Sure. I appreciate it. 6 Q. So you had reading 7 comprehension with respect to these 8 documents? I just want to confirm that. 9 A. Correct. Yes. Thank you. 10 Q. Okay. Let's go back to 11 Exhibit-3. I want to go to Page 156584. 12 Tell me when you're there. 13 A. I am there. 14 Q. You say, I have had 15 discussions at my company and we think it 16 would be a good idea to have a meeting 17 with DEA to raise our concerns and get 18 further clarification from them, 19 particularly as it relates to reporting 20 suspicious orders. 21 Do you see that? 22 A. I do. 23 Q. What did you mean by that? 24 A. Again, to the best of my</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What specifically did you 2 want to address with the DEA? 3 MR. NICHOLAS: Objection. 4 Asked and answered several times 5 now. 6 THE WITNESS: Again, it was 7 the shipping requirement 8 statement, to my recollection at 9 this point, that was what I was 10 concerned with. There may have 11 been other things that, looking at 12 the -- just at this e-mail that -- 13 that I could have had a concern 14 with. 15 But at this time, looking at 16 this, that was my major concern. 17 BY MR. PIFKO: 18 Q. So we have the opinion in 19 front of you, Exhibit-2. 20 Can you direct me to the 21 portion of the opinion that you're saying 22 that you were concerned about? 23 MR. NICHOLAS: Well -- 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 67</p> <p>1 recollection, and seeing no other 2 documents, other than this particular 3 e-mail chain -- and I would refer back to 4 my prior response on a similar question, 5 and that is, I was seeing language in the 6 decision that I had not seen before in 7 the regulation and the law. 8 And that's -- without being 9 more specific than that, that was what 10 my -- what I recall to be my general 11 concern at that time. 12 Q. What did you want to get 13 clarification from the DEA about? 14 MR. NICHOLAS: Objection. 15 Asked and answered. Object to the 16 form. 17 THE WITNESS: Again, just to 18 repeat myself, where I saw that 19 there were new language or 20 different language than the 21 regulation or the laws, I thought 22 that having a meeting with DEA, we 23 could address those issues. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Take your time. 2 MR. NICHOLAS: -- I'll 3 object to the form. But now he's 4 going to have to read the entire 5 opinion while we sit here. 6 Is that what you want him to 7 do? 8 BY MR. PIFKO: 9 Q. Are you able to direct me to 10 the portion of the opinion that you were 11 concerned about? 12 A. I can flip through the 13 document and try to find it, or I can 14 read the whole document. I'm happy to 15 flip through it to try to find the 16 reference to shipping requirement. 17 Q. Well -- 18 A. If I don't find it by 19 flipping through it, I'll have to read 20 the whole document. 21 Q. We had attempted to give you 22 a highlighted version, but let's go back 23 to Page 7. 24 A. I am on Page 7.</p>

Page 70

1 Q. Okay. There's a section
2 there, The reporting requirement.
3 Do you see that? We read
4 that?
5 A. In Paragraph 2?
6 Q. Yes. On the bottom there.
7 A. Yes.
8 Q. Okay. If you turn to the
9 next page, continuing through that
10 paragraph, it says, Once a distributor
11 has reported a suspicious order, it must
12 make one of two choices: Decline to ship
13 the order, or conduct some due diligence.
14 And if it is able to determine that the
15 order is not likely to be diverted into
16 illegal channels, ship the order (the
17 shipping requirement).
18 Do you see that?
19 A. Yes, I do.
20 Q. Is this what you were
21 talking about?
22 MR. NICHOLAS: Object to the
23 form.
24 Go ahead.

Page 71

1 THE WITNESS: It is.
2 BY MR. PIFKO:
3 Q. What, specifically, was your
4 concern with this language?
5 MR. NICHOLAS: Object to the
6 form. Asked and answered.
7 THE WITNESS: It's
8 contradictory. And it's
9 contradictory to my understanding
10 of what the regulation, the
11 regulations require.
12 As I stated, when
13 AmerisourceBergen determines,
14 after reviewing an order, that
15 it's suspicious, it's forever
16 rejected and it's reported to DEA.
17 So under our program, there
18 is no other choice. If that order
19 is deemed suspicious, then it's
20 reported to the DEA and it's
21 rejected.
22 And, here, that -- there
23 seems to offer another alternative
24 where you can treat a suspicious

Page 72

1 order somehow differently. And
2 that would be -- that was part of
3 my concern.
4 BY MR. PIFKO:
5 Q. And in what way do you mean
6 you could "treat it differently"?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: It suggests
10 that you can determine an order
11 suspicious, I guess, and then
12 determine it's not suspicious and
13 ship it.
14 And, again, that's a
15 contradiction to what my
16 understanding of what the
17 regulation and the law requires.
18 BY MR. PIFKO:
19 Q. Because it's your
20 understanding that once an order is
21 suspicious, it cannot be shipped,
22 correct?
23 MR. NICHOLAS: Object to the
24 form.

Page 73

1 THE WITNESS: Under ABC's
2 program, which is designed to meet
3 the requirements of the law and
4 the regulation, once we identify
5 an order as suspicious, it's
6 rejected and reported as
7 suspicious.
8 BY MR. PIFKO:
9 Q. Let's go back to -- just to
10 be clear, does that summarize your
11 concerns that we were just talking about
12 when we were looking at the e-mail?
13 MR. NICHOLAS: Object to the
14 form. It mischaracterizes the
15 testimony as well.
16 THE WITNESS: Again, in the
17 context of this one e-mail, with
18 no other context and based upon my
19 recollection of the e-mail events,
20 that's one of the concerns.
21 There may have been others
22 that I'm not recalling at this
23 time.
24 BY MR. PIFKO:

<p style="text-align: right;">Page 74</p> <p>1 Q. Understood. Going back to 2 the e-mail, Exhibit-3, you say, I have 3 not yet approached my colleagues at 4 Cardinal or McKesson yet, but I am 5 confident we all share similar concerns. 6 Do you see that? 7 A. I'll try to get to that. Is 8 that on the first -- 9 Q. It's on the last page. 10 A. Last page. Okay, yes. I 11 see that. 12 Q. Did you discuss this issue 13 with people at Cardinal and McKesson? 14 MS. KVESELIS: Objection. 15 THE WITNESS: In the context 16 of this MDL, I've been provided 17 the opportunity to meet with my 18 colleagues at Cardinal and 19 McKesson where we discussed 20 general topics related to 21 diversion control. 22 BY MR. PIFKO: 23 Q. Well, let's back up. I'm 24 just talking about the time period of --</p>	<p style="text-align: right;">Page 76</p> <p>1 meaning communications that 2 included attorneys or 3 communications that were -- and, 4 additionally, that may have been 5 communications that may have been 6 court sanctioned or court ordered. 7 So I will instruct you not 8 to answer to the extent -- to the 9 extent there were attorneys 10 involved, attorney communications 11 involved. 12 MS. KVESELIS: Objection to 13 form. 14 MR. PIFKO: You can only 15 have one objection for you guys, 16 so you're going to have to pick 17 who is making the objections. 18 MR. NICHOLAS: It's mine. 19 MR. PIFKO: Okay. 20 MS. KVESELIS: You can 21 object on privilege grounds and 22 I'm objecting on form. 23 MR. PIFKO: You can't. You 24 can't. Only one -- the protocol</p>
<p style="text-align: right;">Page 75</p> <p>1 specifically of this e-mail, not as a 2 general matter. 3 So my question is, you wrote 4 them -- you wrote this e-mail in July 5 13th, 2017 and you talk about approaching 6 colleagues at those two companies. And 7 my question is more specific than that, 8 in that on or around that time did you 9 specifically reach out to anyone at 10 Cardinal or McKesson to discuss the 11 Masters decision? 12 A. Not -- 13 MS. KVESELIS: Objection. 14 THE WITNESS: Not to my 15 recollection, no. 16 BY MR. PIFKO: 17 Q. At some point later did you 18 reach out to people at Cardinal and 19 McKesson to discuss this? 20 MR. NICHOLAS: I'm going to 21 interpose, not just an objection 22 but an instruction not to respond 23 to this, to the extent it involves 24 the attorney-client privilege,</p>	<p style="text-align: right;">Page 77</p> <p>1 is clear, only one objection 2 stands. Tell me which of your -- 3 which objection stands. 4 MR. NICHOLAS: Well, she's 5 counsel for another party. 6 MR. PIFKO: It doesn't 7 matter. The protocol is specific, 8 it says only one objection. Pick 9 one. 10 MR. DAVISON: That's not 11 correct. 12 MR. NICHOLAS: I didn't 13 think that's what the protocol 14 said. That's why I'm asking. We 15 can look it up, though. 16 MR. PIFKO: This isn't a big 17 deal. Next time we take a break, 18 we'll get it clarified. 19 MR. NICHOLAS: Well, if 20 you'd like, if it will make 21 everyone feel better, I will add 22 an objection to the form to my 23 objection. 24 MR. PIFKO: Done.</p>

Page 78

1 MR. NICHOLAS: And scope.
2 BY MR. PIFKO:
3 Q. Now that we've had all of
4 this discussion, let's get back to the
5 question. And I'll ask it in a different
6 way so we can get clarity.
7 My question was, aside from
8 communications where counsel was present,
9 did you reach out to McKesson or Cardinal
10 to discuss the Masters decision?
11 MS. KVESELIS: Objection to
12 form.
13 THE WITNESS: I did not
14 reach out, to the best of my
15 recollection, to Cardinal or
16 McKesson. In fact, this meeting
17 with DEA that was anticipated and
18 discussed never took place.
19 BY MR. PIFKO:
20 Q. Let's go to the first page
21 of the e-mail, 156582.
22 Are you there?
23 A. I am.
24 Q. You say, I have reached out

Page 79

1 to McKesson and will do the same with
2 Cardinal and will get back to you when I
3 have their responses.
4 Do you see that? Sorry, on
5 the top of the e-mail.
6 A. Yes, I'm just trying to read
7 that specific e-mail.
8 Okay. I see that.
9 Q. It says, I have reached out
10 to McKesson -- we just read that, okay?
11 A. Yes.
12 Q. Who did you reach out to at
13 McKesson?
14 MS. KVESELIS: Objection to
15 form.
16 THE WITNESS: And, again, I
17 don't have a recollection of
18 specifically reaching out to
19 McKesson to set up any meeting.
20 And no meeting ever took place.
21 BY MR. PIFKO:
22 Q. Understood. But you say
23 here that you reached out to McKesson,
24 agree?

Page 80

1 A. Yes, I agree.
2 Q. Is there someone at McKesson
3 that you typically would -- your main
4 contact you would reach out to, if you
5 were going to call them?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: Again, I don't
9 have any recollection of reaching
10 out. So I haven't -- I have --
11 don't know who that would have
12 been a reference to, if, in fact,
13 I reached out.
14 BY MR. PIFKO:
15 Q. Do you interact with
16 McKesson in connection with the had?
17 MS. KVESELIS: Objection to
18 form.
19 THE WITNESS: There are
20 phone calls with the had that the
21 distributors participate in,
22 including myself. And there are
23 other representatives from other
24 wholesalers, including McKesson

Page 81

1 and Cardinal.
2 BY MR. PIFKO:
3 Q. Do you know any of the other
4 representatives from McKesson and
5 Cardinal who participate?
6 MS. KVESELIS: Objection to
7 form.
8 THE WITNESS: I do know some
9 individuals who I've met at
10 McKesson, but don't know
11 specifically who was on those
12 phone calls. And it changes from
13 time to time.
14 BY MR. PIFKO:
15 Q. Who have you met from
16 McKesson?
17 MS. KVESELIS: Objection to
18 form.
19 THE WITNESS: A couple of
20 individuals. Gary Boggs being one
21 of them.
22 BY MR. PIFKO:
23 Q. He's another DEA agent,
24 correct? Former DEA agent?

Page 82

1 A. He is.
2 Q. Do you know him from working
3 at the DEA?
4 A. Never met him before until
5 we both were working at these companies.
6 Q. Anyone else from McKesson
7 that you've met?
8 MS. KVESELIS: Objection to
9 form.
10 THE WITNESS: During the
11 course of the last four and-a-half
12 years at the various had meetings,
13 I'm sure I've met other Cardinal,
14 McKesson representatives.
15 But I couldn't list all
16 their names, no.
17 BY MR. PIFKO:
18 Q. Can you identify any
19 Cardinal representatives that you've met?
20 A. I would respond the same
21 way. I've met several over time and at
22 different meetings. I don't have all
23 their names off the top of my head.
24 Q. Okay. You say in the same

Page 83

1 portion of the e-mail, I don't want to
2 wait too long to make the specific
3 request (and want it on the record, in
4 quotes, that we are seeking clarification
5 in this area).
6 Do you see that?
7 A. I do.
8 Q. Why did you want it on the
9 record that you were seeking
10 clarification in this area?
11 A. I thought the subject was
12 important enough to be raised with the
13 DEA. And so having it as documentation
14 because of its importance, I thought,
15 would be important.
16 Q. You wanted it documented
17 because you wanted it clear that the
18 company was reaching out to seek
19 clarification?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: I wanted it to
23 be documented because I thought it
24 was an important matter.

Page 84

1 BY MR. PIFKO:
2 Q. You mention Demetra Ashley
3 here.
4 Do you see that?
5 A. I do.
6 Q. Who is she?
7 A. She was, at that time, I
8 believe, working as the acting deputy
9 administrator for diversion control.
10 Q. Can you read the first
11 sentence of that first paragraph in your
12 3:11 p.m. e-mail aloud, please?
13 A. So where it starts, I know
14 Demetra?
15 Q. Exactly, yes.
16 A. I know Demetra and, quite
17 frankly, I would prefer to wait until
18 Administrator Rosenberg names a
19 replacement for Millione to have the
20 meeting.
21 Q. What did you mean by that?
22 A. Having someone in an acting
23 capacity at DEA, they don't always have
24 the authority of the position itself.

Page 85

1 And I felt that it would be more
2 appropriate to talk to a
3 permanent-position employee that was
4 occupying that particular position as
5 opposed to somebody that maybe didn't
6 carry the full weight of the office.
7 MR. PIFKO: With that, we
8 can take a break.
9 VIDEO TECHNICIAN: Going off
10 the record. 10:19 a.m.
11 - - -
12 (Whereupon, a brief recess
13 was taken.)
14 - - -
15 VIDEO TECHNICIAN: We're
16 back on the record. The time is
17 10:40 a.m.
18 BY MR. PIFKO:
19 Q. We didn't discuss this
20 before we started, but under the rules of
21 law governing this case, you are not
22 permitted to discuss the substance of
23 your deposition during breaks.
24 During the last break, did

<p style="text-align: right;">Page 86</p> <p>1 you discuss the substance of your 2 deposition with counsel? 3 A. No. 4 Q. And we have an agreement 5 that you're not going to be doing that 6 going forward either? 7 A. Yes. 8 Q. Do you have an understanding 9 of the purpose -- 10 MR. NICHOLAS: Somebody is 11 not on mute on the phone, if you 12 guys could just mute your phone. 13 Thanks. 14 BY MR. PIFKO: 15 Q. Let me restart that. 16 You understand that 17 AmerisourceBergen is a registrant under 18 The Controlled Substances Act, correct? 19 A. Yes. 20 Q. And you understand that, as 21 a registrant, AmerisourceBergen has a 22 duty to prevent -- to maintain effective 23 controls to prevent diversion, correct? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 88</p> <p>1 A. There are a couple different 2 types of diversion. 3 We're not talking about 4 contract diversion here, we're talking 5 about diversion of controlled substances? 6 Q. Correct. 7 A. Really, in a very general 8 description, I would say that diversion 9 takes place any time the legitimate 10 intended -- the legitimate intended 11 prescribing and use of a controlled 12 substance is not met, that somehow the 13 controlled substance is not used for the 14 legitimate medical purposes for what it 15 is intended, in a very general way. 16 Q. Do you understand the 17 concept, under The Controlled Substances 18 Act, of the closed system of 19 distribution? 20 A. I do. 21 Q. What is your understanding 22 of that? 23 A. With the passage of the 24 Controlled Substance Act, there was the</p>
<p style="text-align: right;">Page 87</p> <p>1 form. 2 THE WITNESS: Yes. 3 BY MR. PIFKO: 4 Q. Do you understand why the 5 law wants you to maintain effective 6 controls to prevent diversion? 7 MR. NICHOLAS: Object to the 8 form. Outside the scope. 9 I assume you're asking him 10 this question as an individual at 11 this point, in any event. But I 12 object to the form of the 13 question. 14 THE WITNESS: Could you 15 repeat your question, please? 16 BY MR. PIFKO: 17 Q. What's diversion? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: Diversion in 21 the context of the pharmaceutical 22 industry? 23 BY MR. PIFKO: 24 Q. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 design of a closed system of distribution 2 of controlled substances. And the system 3 would be closed effectively by requiring 4 anybody within that system to have a DEA 5 registration; so whether you're a 6 manufacturer, a distributor, 7 practitioner, pharmacist. 8 The goal of -- the goal of 9 the closed system is to create this body 10 of registered entities that, by getting 11 that registration, would give you the 12 authority and permission to carry out 13 whatever that function was that you had 14 within that registrant community. 15 Q. And you understand that 16 along with authority to carry out that 17 function, you also have certain legal and 18 regulatory obligations that you must 19 comply with, correct? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: That 23 AmerisourceBergen has, as a 24 registrant, wholesale distributor,</p>

Page 90

1 has certain requirements imposed
2 upon it, yes.
3 BY MR. PIFKO:
4 Q. As a result of being a
5 registrant?
6 A. Yes.
7 Q. And one of those
8 requirements is to maintain effective
9 controls to prevent diversion, correct?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: Yes.
13 BY MR. PIFKO:
14 Q. Let's just -- are you
15 familiar with the scheduling of
16 prescription drugs or drugs in general,
17 substances?
18 MR. NICHOLAS: Object to the
19 form. Outside the scope.
20 THE WITNESS: Referring to
21 the DEA scheduling?
22 BY MR. PIFKO:
23 Q. Yes.
24 A. Yes. I'm generally familiar

Page 91

1 with it.
2 Q. Do you know what -- a
3 substance that's classified as a Schedule
4 II, what's that mean?
5 MR. NICHOLAS: Same
6 objection.
7 THE WITNESS: Generally,
8 looking at the scheduling of
9 controlled substances, generally
10 speaking, the design of the
11 schedule takes into effect -- or
12 takes into consideration whether a
13 product has some medical value and
14 it takes in the potential of abuse
15 of a product.
16 And so moving from the lower
17 schedule to a higher schedule, you
18 would generally see a higher abuse
19 potential of the products within
20 those different schedules. And,
21 conversely, you would see less
22 medical use and more medical use
23 as you increase in schedules.
24 That's a general

Page 92

1 description.
2 BY MR. PIFKO:
3 Q. Do you understand a Schedule
4 I substance has -- the U.S. government
5 has said it has no legitimate medical
6 purpose? Do you understand that?
7 MR. NICHOLAS: Objection.
8 Outside the scope.
9 THE WITNESS: I'm familiar
10 with some of the substances within
11 Schedule I that are illegal drugs.
12 BY MR. PIFKO:
13 Q. Well, let's focus on
14 Schedule II substances.
15 Do you understand that the
16 litigation for which we're here today
17 concerns opioid products?
18 A. Yes.
19 Q. Can you tell me what an
20 opioid product is?
21 A. Again, there is -- there are
22 opioids and there are opiates. There
23 tends to be some confusion. I think most
24 people today generally refer to opioids.

Page 93

1 Opiates would be those
2 products that have the natural derivative
3 coming from a natural plant, whereas
4 opioids would have a synthetic creation
5 and resemble the natural ingredient.
6 And so talking about
7 opioids, you would be talking about
8 oxycodone, for example. And talking
9 about opiates, you would be talking about
10 opium. But there's been some mixing of
11 some of this terminology.
12 Q. An opiate is derived from
13 the poppy plant, correct?
14 A. Yes.
15 Q. You mentioned hydrocodone --
16 I mean, you mentioned oxycodone as an
17 opioid, correct?
18 A. Yes.
19 Q. What about hydrocodone, do
20 you know what that is?
21 A. Opioid, yes.
22 Q. Are there any other opioid
23 products you can identify?
24 A. Fentanyl would be an opioid

<p style="text-align: right;">Page 94</p> <p>1 product. And there's a pretty long list. 2 And to be clear, I'm not a pharmacist. 3 Q. Understood. 4 A. I want to make sure that's 5 clear for the record. 6 Q. Do you understand that those 7 substances are Schedule II substances? 8 A. Yes. 9 Q. And do you understand -- 10 A. I'm sorry, just for the 11 record. 12 Oxycodone and hydrocodone? 13 Q. Yes. 14 A. Yes. 15 Q. And fentanyl? 16 A. Yes. 17 MR. NICHOLAS: What time 18 period are we talking about? 19 THE WITNESS: Again, there 20 was a rescheduling of hydrocodone 21 where it was relatively recently 22 put in II, Schedule II. 23 BY MR. PIFKO: 24 Q. In 2014 it moved from</p>	<p style="text-align: right;">Page 96</p> <p>1 our diversion control program, yes. 2 Q. Okay. And beyond complying 3 with the legal requirements, do you 4 understand why you want to prevent 5 Schedule II substances from getting into 6 illegitimate hands? 7 MR. NICHOLAS: Object to the 8 form. Object to the scope. 9 THE WITNESS: I'm still not 10 sure I understand the question. 11 BY MR. PIFKO: 12 Q. You testified earlier that 13 the idea of preventing diversion is to 14 prevent products from getting into 15 illegitimate medical use, correct? 16 MR. NICHOLAS: Object to the 17 form. Object to the scope. 18 THE WITNESS: In part, yes. 19 BY MR. PIFKO: 20 Q. And what I'm trying to 21 understand is if you have an 22 understanding as to why we want to do 23 that. 24 MR. NICHOLAS: Object to the</p>
<p style="text-align: right;">Page 95</p> <p>1 Schedule III to Schedule II, correct? 2 A. Yes, sir. 3 Q. You understand that a 4 product that is a Schedule II substance 5 has been deemed, under the laws, to have 6 a high potential for abuse, correct? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Yes, generally 10 speaking. 11 BY MR. PIFKO: 12 Q. So when we talk about 13 preventing diversion, why do we want to 14 prevent Schedule II products from being 15 diverted? 16 MR. NICHOLAS: Object to the 17 form. Object to the scope. 18 THE WITNESS: I'm not sure I 19 understand the question. 20 BY MR. PIFKO: 21 Q. It's your job at 22 AmerisourceBergen to run its efforts to 23 prevent diversion, correct? 24 A. Correct. It's to oversee</p>	<p style="text-align: right;">Page 97</p> <p>1 form. Object to the scope. 2 THE WITNESS: Again, as 3 you've stated, as a registrant, we 4 have certain requirements imposed 5 upon us. And I oversee the 6 programs at ABC that we utilize to 7 adhere to those requirements. 8 In terms of why do we want 9 to prevent diversion, I can offer 10 my individual view. But, again, 11 that would be not responding to 12 your -- not being responsive as 13 the company representative. 14 BY MR. PIFKO: 15 Q. I'd like you to give me your 16 view, however we're going to hear it. 17 MR. NICHOLAS: Object to the 18 form. Object to the scope. 19 Go ahead. 20 THE WITNESS: So, again, 21 with that caveat in mind that I 22 mentioned, we have anti-diversion 23 programs in place to prevent the 24 misuse and abuse of controlled</p>

Page 98

1 substances.
2 BY MR. PIFKO:
3 Q. So if we are not effective
4 in preventing diversion, we can have
5 misuse of controlled substances, agree?
6 MR. NICHOLAS: Object to the
7 form. Object to the scope.
8 THE WITNESS: So, again,
9 here there is conjecture in your
10 question about if we -- I'm not
11 sure who the "we" is, but
12 AmerisourceBergen has effective
13 controls in place to prevent
14 diversion.
15 So I guess that would be my
16 response.
17 BY MR. PIFKO:
18 Q. Maybe it was a bad question
19 by me using the term "we," so I'll ask it
20 again in a different way.
21 A. Sure.
22 Q. And maybe we can work
23 through that.
24 If any registrant, not

Page 99

1 speaking about any specific one, who has
2 a duty to maintain effective controls to
3 prevent diversion, does not maintain
4 effective controls to prevent diversion,
5 we can have drug abuse, correct?
6 MR. NICHOLAS: Object to the
7 form. Object to the scope.
8 THE WITNESS: So two things.
9 Again, if -- starting your
10 question having some conjecture
11 there, I really can't respond to
12 conjecture. And also would not
13 respond to other registrants'
14 duties and requirements. I'll
15 respond to ABC's.
16 And, again, my response
17 would be that we have effective
18 controls in place to prevent
19 diversion.
20 BY MR. PIFKO:
21 Q. Let me ask you this way: If
22 AmerisourceBergen did not have effective
23 controls to prevent diversion, do you
24 believe that drug abuse could occur as a

Page 100

1 result?
2 MR. NICHOLAS: Object to the
3 form. Object to the scope. Asked
4 and answered.
5 THE WITNESS: Again, the
6 conjecture there, I can't respond
7 to a situation where there's not a
8 factual bases.
9 So I'll just rely upon my
10 previous response that
11 AmerisourceBergen has effective
12 controls in place to prevent
13 diversion.
14 BY MR. PIFKO:
15 Q. In carrying out your efforts
16 to prevent diversion, are you trying to
17 prevent drug abuse?
18 MR. NICHOLAS: Object to the
19 form. Object to the scope.
20 He's here to answer factual
21 questions today.
22 THE WITNESS: So on the
23 first part, we have effective
24 controls in place to prevent

Page 101

1 diversion.
2 On the second part of that
3 question, I believe I provided my
4 view relative to drug abuse.
5 BY MR. PIFKO:
6 Q. Forgive me, but I don't
7 understand.
8 So I'm just asking you --
9 when you say you provided your view, I
10 don't understand the answer yet. So I
11 just would like you to express it again.
12 MR. NICHOLAS: Well,
13 obviously, in the form of that
14 question it's clear that it's been
15 asked and answered. Object to the
16 form. Object to the scope. Asked
17 and answered.
18 THE WITNESS: Maybe we can
19 go back to the question, and we'll
20 start again.
21 BY MR. PIFKO:
22 Q. Of course. I'll try to ask
23 it a different way.
24 Do you believe there's a

<p style="text-align: right;">Page 102</p> <p>1 linkage between drug abuse and 2 maintaining controls to prevent 3 diversion? 4 MR. NICHOLAS: Object to the 5 form. Object to the scope. 6 THE WITNESS: And, again, 7 the question would call for my 8 personal opinion. 9 And to that, I would only 10 say that I oversee programs at ABC 11 that are effective in terms of 12 preventing diversion. 13 BY MR. PIFKO: 14 Q. That's not my question. And 15 I understand that you're trying to speak 16 to an issue. But you really need to 17 answer the question. 18 And my question is if you 19 believe there's a linkage between drug 20 abuse and maintaining controls to prevent 21 diversion? 22 I don't want an answer about 23 what the policies are or procedures are, 24 that's not what I'm asking. I'm simply</p>	<p style="text-align: right;">Page 104</p> <p>1 AmerisourceBergen's procedures in this 2 question. 3 I'm simply asking if you 4 understand that there's a linkage between 5 effective controls to prevent diversion 6 and drug abuse? 7 MR. NICHOLAS: Same 8 objection. All of my same 9 objections. 10 THE WITNESS: And I would 11 rely upon my previous response. 12 BY MR. PIFKO: 13 Q. Your previous response is 14 insufficient. You have not answered the 15 question. 16 Sir, do you understand that 17 you are legally obligated to answer my 18 questions, unless he instructs you not to 19 answer; and he has to have a valid basis. 20 You need to answer my questions. You 21 cannot refuse to answer the questions, 22 okay? Do you understand that? 23 MR. NICHOLAS: He's not 24 refusing to answer the questions.</p>
<p style="text-align: right;">Page 103</p> <p>1 asking if you believe there's a linkage 2 between drug abuse and maintaining 3 effective controls to prevent diversion. 4 MR. NICHOLAS: Hold on. 5 BY MR. PIFKO: 6 Q. Do you understand the 7 question? 8 MR. NICHOLAS: Hold on. 9 I'll object to the form. I'll 10 object to the scope. The question 11 has been asked a number of times. 12 He's not a social scientist. 13 He's not an epidemiologist. 14 THE WITNESS: So I'd go back 15 to my response, and that is that 16 when it comes to our requirements 17 at ABC to have effective controls 18 in place to prevent diversion, we 19 meet those requirements. 20 BY MR. PIFKO: 21 Q. The record is clear that 22 you're not giving an answer to the 23 question. I didn't ask you if you meet 24 the requirements or anything about</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. PIFKO: He is. 2 MR. NICHOLAS: He's 3 answering the questions. 4 MR. PIFKO: No. In 5 giving -- 6 MR. NICHOLAS: He's 7 answering the question. 8 MR. PIFKO: In giving 9 evasive answers -- 10 MR. NICHOLAS: You can't -- 11 MR. PIFKO: -- and speaking 12 about something that's not 13 responsive to my question is not 14 answering. It's not cooperative. 15 And we will address it. 16 BY MR. PIFKO: 17 Q. You're a man of the law, I 18 don't need to explain that to you. You 19 understand. 20 We need your cooperation. 21 This is a serious matter. You need to 22 answer the question, okay? 23 MR. NICHOLAS: Hold on. 24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 106</p> <p>1 Q. And if I ask you a question 2 that's a yes-or-no question, you can't go 3 and start meandering about the policies 4 and procedures, okay? You need to think 5 about what I'm asking and you need to 6 answer it. 7 Do you understand? 8 MR. NICHOLAS: That's a 9 lecture. He doesn't need a 10 lecture. It's inappropriate. 11 BY MR. PIFKO: 12 Q. Do you understand what I'm 13 telling you, sir? 14 MR. NICHOLAS: And you can't 15 talk over me. 16 MR. PIFKO: I can. You're 17 not objecting. 18 MR. NICHOLAS: Then you'll 19 keep talking and I'll keep 20 talking. You're talking over me. 21 You're lecturing him, you're 22 bullying him and harassing. 23 MR. PIFKO: Because he's not 24 cooperating.</p>	<p style="text-align: right;">Page 108</p> <p>1 I just said to you about the instructions 2 about complying about this deposition? 3 A. Yes. 4 Q. Do you intend to comply? 5 A. I have been complying. 6 Q. I disagree with you, 7 respectfully. I am asking you very 8 specific questions, and you are not 9 responding to my questions. 10 Do you intend to provide 11 accurate questions -- or answers that 12 respond to exactly what I ask you? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: I intend to 16 answer your questions accurately, 17 yes. 18 BY MR. PIFKO: 19 Q. Do you intend to respond to 20 the questions that I ask you? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: Yes. 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 107</p> <p>1 MR. NICHOLAS: I'm not 2 instructing him not to answer. 3 MR. PIFKO: He's not 4 complying with the rules. 5 MR. NICHOLAS: He's answered 6 the question about eight times. 7 MR. PIFKO: He's not. 8 And -- 9 MR. NICHOLAS: As you said 10 in the Merrill -- 11 MR. PIFKO: -- the record is 12 clear. 13 MR. NICHOLAS: As you said 14 in the Merrill Gordon deposition, 15 he's entitled to answer the 16 deposition. Your witness is 17 entitled -- 18 MR. PIFKO: You can do your 19 lawyering all you want, but he's 20 not cooperating. 21 MR. NICHOLAS: I disagree. 22 MR. PIFKO: Okay. 23 BY MR. PIFKO: 24 Q. Sir, do you understand what</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. If I ask you what your 2 favorite color is, I don't want to hear 3 what you had for dinner. 4 Do you understand that? 5 MR. NICHOLAS: Object to the 6 form. Pretty obnoxious. No need 7 for that kind of thing. 8 Right? 9 BY MR. PIFKO: 10 Q. Do you understand that? 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Yes. 14 BY MR. PIFKO: 15 Q. So let's try this again. 16 Do you understand there to 17 be a linkage between preventing diversion 18 and drug abuse? 19 MR. NICHOLAS: Object to the 20 form. All the same objections. 21 THE WITNESS: Again, the 22 question has been asked several 23 times and the question concerns 24 having effective controls.</p>

<p style="text-align: right;">Page 110</p> <p>1 And I've responded several 2 times relative to the issue of 3 effective controls that we have in 4 place at ABC to prevent diversion. 5 I would rely upon that 6 response again. 7 BY MR. PIFKO: 8 Q. That's not the question I've 9 asked you. You're not answering. You're 10 not cooperating, okay? 11 I'm going to bring you back 12 here, we're going to go all day here, and 13 I'm going to ask you all the questions I 14 want to ask you. And we're going to have 15 to bring you back here, and we're going 16 to have to get some more answers because 17 you're not cooperating, okay? I want you 18 to understand that. 19 MR. NICHOLAS: Object to the 20 form. Object to the speech. 21 What he's saying isn't true. 22 Go on. 23 BY MR. PIFKO: 24 Q. If AmerisourceBergen does</p>	<p style="text-align: right;">Page 112</p> <p>1 BY MR. PIFKO: 2 Q. You haven't. Please answer. 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: If we fail to 6 have effective controls in place, 7 is a question that doesn't state 8 facts. It states conjecture. 9 And I can't respond relative 10 to conjecture. I can respond 11 relative to the facts of the 12 matter around effective controls. 13 We have effective controls in 14 place to prevent diversion -- 15 BY MR. PIFKO: 16 Q. In joining -- 17 A. -- at ABC. 18 Q. In joining AmerisourceBergen 19 in 2014, did you review the company's 20 prior practices and procedures regarding 21 diversion? 22 A. Yes. 23 Q. How far back did you 24 familiarize yourself with the company's</p>
<p style="text-align: right;">Page 111</p> <p>1 not maintain effective controls to 2 prevent diversion, do you believe that 3 drug abuse can occur? 4 MR. NICHOLAS: Object to the 5 form. Outside the scope. 6 THE WITNESS: Again, you've 7 asked me this question in several 8 different formats and, again, 9 you're asking with this conjecture 10 if we didn't have them in place. 11 And my only response to that 12 is, we have them in place, 13 effective controls, to prevent 14 diversion. And so I can't respond 15 to a question relative to 16 conjecture. 17 BY MR. PIFKO: 18 Q. If you fail to prevent 19 diversion, do you believe that drugs can 20 get into illegitimate channels? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: I've responded 24 to the question.</p>	<p style="text-align: right;">Page 113</p> <p>1 practices and procedures concerning 2 diversion? 3 A. I don't know that I can 4 assign a specific year. I would say 5 looking back several years, more than two 6 or three. 7 Q. Are you familiar with the 8 company's practices and procedures prior 9 to 2007? 10 MR. NICHOLAS: Object to the 11 scope. This is way outside the 12 scope of his 30(b)(6) domain. 13 THE WITNESS: I may have 14 some limited knowledge relative to 15 the practices prior to 2007. 16 BY MR. PIFKO: 17 Q. You testified as the 18 corporate representative in litigation 19 brought by the West Virginia Attorney 20 General on behalf of AmerisourceBergen, 21 correct? 22 A. Yes. 23 Q. And you testified about the 24 company's policies and procedures,</p>

Page 114

1 correct? Concerning diversion?
2 A. Yes.
3 Q. How far back were you
4 familiar with the company's policies in
5 connection with your testimony in that
6 case?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: To my
10 recollection, the stated time
11 period was some time in 2007, if I
12 recall correctly.
13 BY MR. PIFKO:
14 Q. So you have some
15 familiarity, from testifying in that
16 litigation, with the company's practices
17 going back to 2007?
18 MR. NICHOLAS: Object to
19 the form. Object to the form.
20 Object to the scope. He's now
21 testifying individually.
22 THE WITNESS: Yes.
23 BY MR. PIFKO:
24 Q. Do you believe that, in

Page 115

1 2007, AmerisourceBergen's policies and
2 procedures for preventing diversion were
3 appropriate?
4 MR. NICHOLAS: Object to the
5 form. Object to the scope.
6 THE WITNESS: Yes.
7 BY MR. PIFKO:
8 Q. Has anyone ever told you
9 that you have problems with your
10 diversion control program?
11 MR. NICHOLAS: Object to the
12 form. And scope.
13 THE WITNESS: I would say it
14 would be helpful to narrow the
15 question, because anyone is --
16 that's quite broad. And I would
17 say in the broad context, the
18 answer would be no.
19 BY MR. PIFKO:
20 Q. No one has ever told you
21 that AmerisourceBergen's program has gaps
22 with respect to maintaining effective
23 controls against diversion?
24 MR. NICHOLAS: Object to

Page 116

1 form. Object to the scope.
2 THE WITNESS: Again, I'd
3 have to ask you to qualify it
4 more, because that's quite broad
5 of a question.
6 So perhaps it would be -- I
7 could be more responsive if the
8 question was narrowed down some.
9 - - -
[REDACTED]

Page 117

[REDACTED]

Page 118

[REDACTED]

Page 120

[REDACTED]

Page 119

[REDACTED]

Page 121

[REDACTED]

Page 122

[REDACTED]

Page 124

[REDACTED]

Page 123

[REDACTED]

Page 125

[REDACTED]

Page 126

Page 128

[illegible][illegible]

Page 127

Page 129

Row	Bar Length (approx. % of total width)
1	10
2	90
3	95
4	80
5	65
6	60
7	80
8	98
9	75
10	92
11	88
12	55
13	60
14	35
15	65
16	92
17	95
18	80
19	90
20	70

Page 130

[REDACTED]

Page 132

[REDACTED]

Page 131

[REDACTED]

Page 133

[REDACTED]

Page 134

[REDACTED]

Page 136

[REDACTED]

Page 135

[REDACTED]

Page 137

[REDACTED]

Page 138

[REDACTED]

Page 140

[REDACTED]

Page 139

1 [REDACTED]

Page 141

[REDACTED]

Page 142

[REDACTED]

Page 144

[REDACTED]

Page 143

[REDACTED]

Page 145

1 [REDACTED]

Page 146

[REDACTED]

Page 148

[REDACTED]

Page 147

[REDACTED] in

Page 149

[REDACTED]

Page 150

[REDACTED]

Page 152

[REDACTED]

Page 151

1 [REDACTED]

Page 153

[REDACTED]

Page 154

[REDACTED]

Page 156

[REDACTED]

Page 155

[REDACTED]

Page 157

[REDACTED]

Page 158

[REDACTED]

Page 160

[REDACTED]

Page 159

[REDACTED]

Page 161

[REDACTED]

Page 162

[REDACTED]

Page 164

[REDACTED]

Page 163

[REDACTED]

Page 165

[REDACTED]

Page 166

Page 168

[illegible]

Page 167

Page 169

Category	Percentage
1	94%
2	94%
3	94%
4	94%
5	94%
6	94%
7	94%
8	94%
9	94%
10	94%
11	94%
12	94%
13	94%
14	94%
15	94%
16	94%
17	94%
18	94%
19	94%
20	94%
21	94%
22	94%
23	94%
24	94%
25	94%
26	94%
27	94%
28	94%
29	94%
30	94%
31	94%
32	94%
33	94%
34	94%
35	94%
36	94%
37	94%
38	94%
39	94%
40	94%
41	94%
42	94%
43	94%
44	94%
45	94%
46	94%
47	94%
48	94%
49	94%
50	94%
51	94%
52	94%
53	94%
54	94%
55	94%
56	94%
57	94%
58	94%
59	94%
60	94%
61	94%
62	94%
63	94%
64	94%
65	94%
66	94%
67	94%
68	94%
69	94%
70	94%
71	94%
72	94%
73	94%
74	94%
75	94%
76	94%
77	94%
78	94%
79	94%
80	94%
81	94%
82	94%
83	94%
84	94%
85	94%
86	94%
87	94%
88	94%
89	94%
90	94%
91	94%
92	94%
93	94%
94	94%
95	94%
96	94%
97	94%
98	94%
99	94%
100	94%

Page 170

[REDACTED]

Page 172

[REDACTED]

Page 171

[REDACTED]

Page 173

[REDACTED]

Page 174

[REDACTED]

Page 176

[REDACTED]

Page 175

[REDACTED]

Page 177

[REDACTED]

Page 178

[REDACTED]

Page 180

[REDACTED]

Page 179

[REDACTED]

Page 181

[REDACTED]

20 MR. PIFKO: Okay. We can
21 take a lunch break. Thank you.
22 VIDEO TECHNICIAN: Going off
23 the record. 12:24 p.m.
24 - - -

Page 182

1 (Whereupon, a luncheon
2 recess was taken.)
3 - - -
4 VIDEO TECHNICIAN: We're
5 back on the record. The time is
6 1:06 p.m.
7 BY MR. PIFKO
8 Q. I'm handing you what's
9 marked as Exhibit-9. I skipped one, I'll
10 come back to it.
11 - - -
12 (Whereupon,
13 AmerisourceBergen-May Exhibit-9
14 ABDCMDL 00216332-33, was marked
15 for identification.)
16 - - -
17 BY MR. PIFKO:
18 Q. Take a moment to review that
19 and let me know when you're done.
20 For the record, it's a
21 document Bates labeled ABDCMDL 00216232
22 through 33.
23 Are you ready?
24 A. Yes.

Page 183

1 Q. Have you seen this document
2 before?
3 A. I have.
4 Q. Do you know what this is?
5 A. It's an e-mail from Caroline
6 Conneely to myself and others.
7 Q. What was the last time you
8 saw this?
9 A. Date of the e-mail, March
10 15th, 2016.
11 Q. Is this a true and correct
12 copy of the communications reflected in
13 this e-mail?
14 A. Yes.
15 Q. So this is an e-mail, on the
16 first page, it's from Caroline Conneely,
17 dated Tuesday, March 15th, 2016, to you,
18 Eric Cherveney, Sharon Hartman. The
19 subject is OMP reason codes.
20 The first question, Caroline
21 Conneely, she's the consultant who
22 prepared that report?
23 MR. NICHOLAS: Object to the
24 form.

Page 184

1 THE WITNESS: Could you
2 refer me to the report? The FTI
3 Consulting report?
4 BY MR. PIFKO:
5 Q. Correct. Exhibit-4 to be --
6 A. I believe she prepared that
7 report, yes.
8 Q. This is later -- as we
9 discussed, that report was dated in 2015.
10 Do you recall?
11 A. Yes.
[REDACTED]

Page 185

[REDACTED]

Page 186

[REDACTED]

Page 188

[REDACTED]

Page 187

[REDACTED]

Page 189

[REDACTED]

Page 190

Page 192

[illegible][illegible]

Page 191

Page 193

[illegible]

Row	Bar Length (approx. % of total width)
1	40
2	10
3	75
4	90
5	85
6	80
7	20
8	88
9	25
10	78
11	82
12	75
13	85
14	55
15	35
16	80
17	95
18	88
19	70
20	82

Page 194

[REDACTED]

Page 195

[REDACTED]

24 - - -

Page 196

1 BY MR PIFKO:
2 Q. I'm handing you what is
3 marked as Exhibit-8.
4 Please take a moment to
5 review that and let me know when you're
6 ready.
7 The document is Bates
8 labeled ABDCMDL 00158342. The electronic
9 data accompanying the document reflects
10 that you were the custodian and that it's
11 dated July 2nd, 2014.
12 And the file name for the
13 document is 2014 Thought Spot Diversion
14 Control Training PowerPoint.
15 MR. NICHOLAS: Just before
16 we go into questioning on this
17 document, a reminder, or whatever
18 you want to call it, that the
19 witness is designated as a
20 30(b)(6) deponent for the period
21 of time from 2015 to May of 2018.
22 So to the extent we're
23 embarking on questions about prior
24 information or prior materials,

Page 197

1 he's testifying as -- in his
2 individual capacity.
3 BY MR PIFKO:
4 Q. Let me know when you're
5 ready to talk.
6 A. Thank you.
7 I'm ready.
8 Q. Do you recognize this
9 document?
10 A. I do.
11 Q. Can you tell me what this
12 is?
13 A. This is a PowerPoint
14 presentation that was put together for a
15 sales meeting, where I was doing some
16 training to our sales staff in the
17 beginning of August 2014.
18 Q. Is this a true and correct
19 copy of a presentation that you gave at
20 this conference?
21 A. Yes.
22 Q. It says the conference
23 occurred from July -- I'm looking at the
24 first page of the document -- from July

Page 198

1 30th to August 2nd, 2014 at the MGM Grand
2 in Las Vegas; is that correct?
3 A. Correct.
4 Q. And you attended this
5 conference during that time period?
6 A. Yes.
7 Q. And what day was this
8 presented on?
9 A. I'm not sure at this time.
10 I'd have to consult my calendar.
11 Q. And the conference was held
12 at the MGM Grand casino in Las Vegas?
13 A. Yes.
14 Q. What's Thought Spot?
15 A. What is Thought Spot? It's
16 the name of the conference. It's where
17 we bring in many of our independent
18 retail pharmacy customers, together with
19 our community and specialty sales staff,
20 and they spend time together during the
21 conference.
22 Q. When was the last time you
23 saw this document?
24 A. I believe I saw this

Page 199

1 document last week. I reviewed several
2 PowerPoint presentations, I believe this
3 was among them, in preparation for today.
4 Q. Prior to that when was the
5 last time you saw this?
6 A. It would have been at the
7 time of presentation.
8 Q. So let's go to Page 6.
9 So we've got the slides
10 here, these are -- if we look just
11 generally at the format of the document.
12 At the top half of the page,
13 it's the slides that you presented at the
14 conference?
15 A. Yes.
16 Q. And then on the bottom are
17 notes that you made to yourself?
18 A. Yes.
19 Q. This slide is entitled,
20 National Abuse Facts, correct?
21 A. Yes.
22 Q. Your notes say, The
23 statistics overwhelmingly demonstrate
24 that we have a terrible prescription drug

Page 200

1 abuse problem in the U.S. and,
2 tragically, people are dying.
3 Do you see that?
4 A. I do.
5 Q. Do you agree with that?
6 A. Yes.
7 Q. What was the basis for that
8 conclusion that you wrote there that I
9 just read?
10 A. The statistics.
11 Q. Like the items referenced up
12 here, the 38,329 unintentional drug
13 overdose deaths in 2010?
14 A. Yes. And other data that I
15 was familiar with.
16 But these are two of the
17 statistics that would support that
18 statement.
19 Q. We talked, I believe, that
20 you joined AmerisourceBergen in 2014.
21 Do you remember the month?
22 A. I believe it was right
23 around the 1st of March, within a week.
24 Q. So this is only a few months

Page 201

1 after you had been at the company?
2 A. Based upon the dates here,
3 yes.
4 Q. At this time, did you have a
5 belief that members of the pharmaceutical
6 industry, be it manufacturers and/or
7 distributors, had any role in
8 contributing to the prescription drug
9 abuse problem in the U.S. that you
10 reference here?
11 MR. NICHOLAS: Object to the
12 form of the question. I'll
13 reiterate the scope objection as
14 well. But I object to the form of
15 the question.
16 THE WITNESS: At that time,
17 I have no specific memory of any
18 conclusions that I may have drawn
19 relative to the prescription drug
20 abuse problem.
21 BY MR PIFKO:
22 Q. Do you believe that we still
23 have a prescription drug problem in the
24 United States?

<p style="text-align: right;">Page 202</p> <p>1 A. I believe that we've made 2 great advancements in the last several 3 years. I still believe there is work to 4 be done. 5 Q. Have you heard the term 6 "opioid crisis"? 7 A. I have. 8 Q. Do you believe that we're 9 still in the opioid crisis? 10 A. I do. 11 Q. Do you presently have a view 12 as to whether manufacturers and 13 distributors of opioid products 14 contributed to the opioid crisis? 15 MR. NICHOLAS: Object to the 16 form. Outside the scope. 17 THE WITNESS: I don't have 18 an opinion relative to 19 manufacturers and distributors. 20 I can respond in terms of 21 AmerisourceBergen. And I do not 22 believe they contributed to the 23 opioid crisis. 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 204</p> <p>1 I know that 2 AmerisourceBergen delivers 3 medications every day to people 4 who need them, life-saving 5 medications, the majority of which 6 is non-controlled. 7 And in terms of the market 8 share of total medicine delivered, 9 non-controlled and controlled, 10 which is a much smaller aspect of 11 our business as a percentage, I'd 12 have to leave those specific 13 responses to somebody -- somebody 14 else that has that information. 15 BY MR PIFKO: 16 Q. So you believe that -- have 17 you heard the term the "three big three," 18 with respect to McKesson, Cardinal and 19 AmerisourceBergen, in terms of their role 20 as distributors in the pharmaceutical 21 industry in the United States? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: I've seen</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. Do you believe that as a -- 2 let me back up. 3 Do you have a sense of what 4 market share of the United States 5 distribution of opioid products 6 AmerisourceBergen has presently? 7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 THE WITNESS: I'm probably 10 not the best person to talk about 11 market share. 12 BY MR PIFKO: 13 Q. Have you previously heard 14 that AmerisourceBergen, Cardinal Health, 15 and McKesson have approximately 80 to 90 16 percent of the market share of 17 distribution of pharmaceuticals in the 18 United States? 19 MR. NICHOLAS: Objection. 20 Object to the form. Outside the 21 scope. 22 THE WITNESS: Again, I'm 23 probably not the best person to 24 talk about market share.</p>	<p style="text-align: right;">Page 205</p> <p>1 publications and documents that 2 contain that reference. 3 Specifically what those 4 publications are, I couldn't say. 5 BY MR PIFKO: 6 Q. Do you believe that as major 7 entities in the closed system of 8 distribution of controlled substances, 9 Cardinal, AmerisourceBergen and McKesson 10 have the ability to beneficially impact 11 the opioid crisis through their 12 practices? 13 MR. NICHOLAS: Object to the 14 form. Objection on scope as well. 15 THE WITNESS: You know, in 16 the context of your question, I 17 would say that every registrant 18 has the potential to have an 19 impact, large or small; 20 distributor, practitioner, 21 pharmacy, manufacturer. 22 And, again, my concern is 23 AmerisourceBergen and what we do 24 there every day to fulfill our</p>

<p style="text-align: right;">Page 206</p> <p>1 obligations. And that's what my 2 focus is. 3 BY MR PIFKO: 4 Q. Do you believe that 5 AmerisourceBergen has a responsibility to 6 take actions to reduce the impacts of the 7 opioid crisis? 8 MR. NICHOLAS: Objection to 9 the form. Objection as to scope 10 as well. 11 THE WITNESS: I believe that 12 AmerisourceBergen has various 13 requirements that are imposed upon 14 it, as a registrant, through the 15 laws and regulations. 16 BY MR PIFKO: 17 Q. Do you believe that by 18 preventing diversion AmerisourceBergen 19 can make a positive impact on the opioid 20 crisis? 21 MR. NICHOLAS: Object to the 22 form. Objection as to scope. 23 THE WITNESS: I think if 24 AmerisourceBergen fulfills its</p>	<p style="text-align: right;">Page 208</p> <p>1 do not have as a wholesale 2 distributor. 3 And generally speaking, I 4 think that if all registrants of 5 all types fulfill their legal 6 obligations, that would -- that 7 would have a positive impact. 8 BY MR PIFKO: 9 Q. On the opioid crisis? 10 A. On the opioid crisis. 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Yes. 14 BY MR PIFKO: 15 Q. Do you believe that by 16 following its obligation to prevent 17 diversion, AmerisourceBergen can prevent 18 opioid pills from falling into the hands 19 of the black markets? 20 MR. NICHOLAS: Objection as 21 to form. Objection as to scope. 22 THE WITNESS: So, again, you 23 know, you're asking now inserting 24 conjecture. And I have no</p>
<p style="text-align: right;">Page 207</p> <p>1 requirements under the 2 regulations, it will accomplish 3 what it's required to do. 4 BY MR PIFKO: 5 Q. And what is it required to 6 do? 7 MR. NICHOLAS: Object to the 8 form. Object -- let me start that 9 again. 10 Objection as to form. 11 Objection as to scope. 12 THE WITNESS: Again, as a 13 registrant and a wholesale 14 distributor, we have certain 15 requirements imposed upon us in 16 the closed system of distribution 17 that you've alluded to. 18 Within the closed system, 19 there are different requirements 20 based upon where you sit. The 21 practitioner certainly has a 22 different requirement, 23 establishing a patient/doctor 24 relationship, for example, that we</p>	<p style="text-align: right;">Page 209</p> <p>1 response to a set of facts that 2 aren't real. I can't -- I can't 3 respond to a question that's 4 conjecture. I can respond to a 5 question, you know, where there 6 are facts associated with the 7 question. 8 So as I said before, when it 9 comes to our regulatory 10 requirements at AmerisourceBergen, 11 we meet them. We're constantly 12 evaluating how our performance is 13 and how we're meeting them. We 14 are constantly evaluating things 15 that we could possibly do 16 differently to continuously 17 analyze the results of our work, 18 all in an effort to do everything 19 that we can to meet our 20 requirements. 21 BY MR PIFKO: 22 Q. Do you believe that one of 23 the things that you are striving to do, 24 as the senior-most person in the</p>

<p style="text-align: right;">Page 210</p> <p>1 diversion control department, is to 2 prevent pills from getting into illegal 3 markets? 4 MR. NICHOLAS: Objection as 5 to form. Objection as to scope. 6 THE WITNESS: Again, I view 7 my role, as the senior person over 8 our diversion control efforts, as 9 one to make sure that we, as a 10 company, day in and day out, 11 fulfill all of our legal 12 obligations. That's my number one 13 priority. 14 And when I come to work each 15 day, that's what I try to do. 16 BY MR PIFKO: 17 Q. In carrying out your duties 18 as the head of the diversion control 19 program for AmerisourceBergen, do you 20 believe that -- is it important to you to 21 prevent pills from falling into the hands 22 of someone who could suffer an overdose? 23 MR. NICHOLAS: Objection as 24 to form. Objection as to scope.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Is that the company's view, 2 too? 3 MR. NICHOLAS: Objection as 4 to form. Objection as to scope. 5 THE WITNESS: -- I think 6 that the company has stated 7 publicly that they recognize the 8 opioid abuse problem and want to 9 do everything they can to 10 contribute to solutions. 11 BY MR PIFKO: 12 Q. Let's go to Page 9 of this 13 document. 14 Are you there? 15 A. I am. 16 Q. It says, More recently, DEA 17 has shifted an increasingly large number 18 of their special agents who are 19 investigating criminal drug trafficking 20 organizations to newly created tactical 21 diversion squads. And part of their 22 mandate is to use their law enforcement 23 skills at developing criminal 24 investigations, which lead to indictments</p>
<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: Again, I think 2 I've been pretty clear in terms of 3 what I hope to accomplish and what 4 I believe to be my 5 responsibilities are at 6 AmerisourceBergen. 7 I'm happy to repeat those. 8 BY MR PIFKO: 9 Q. Do you hope to accomplish a 10 reduction of overdose deaths? Is that 11 something that you seek to accomplish? 12 MR. NICHOLAS: Objection as 13 to form. Objection as to scope. 14 THE WITNESS: Again, as I've 15 outlined, I think that there are 16 various requirements imposed upon 17 different registrants within the 18 system. And I think if, that, all 19 registrants concentrate on their 20 requirements and carry out those 21 duties, it will have a positive 22 impact on prescription drug abuse. 23 That's a personal view -- 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 213</p> <p>1 and arrests, of all DEA registrants that 2 are members of the closed system, 3 including manufacturers, distributors, 4 doctors, pharmacies. These criminal 5 charges may be brought against the 6 organizations themselves and/or the 7 organization's employees. 8 Do you see that? 9 A. I do. 10 Q. What was the basis of making 11 that statement? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: That statement 15 was made in the context of this 16 entire presentation. It was 17 intended to inform our sales 18 folks, educate our sales folks, in 19 a very general way, about facets 20 of diversion control and our 21 obligations. 22 So there's no specific 23 intent of this statement, other 24 than to say, this is part of the</p>

Page 214

1 regulatory environment, as well as
2 these other things.
3 BY MR PIFKO:
4 Q. How did you know that there
5 were these newly created tactical
6 diversion squads?
7 MR. NICHOLAS: Objection as
8 to form. Objection as to scope.
9 THE WITNESS: Through my
10 work and experience at DEA. I
11 oversaw one of these DEA tactical
12 diversion squads.
13 BY MR PIFKO:
14 Q. You oversaw one of these
15 tactical --
16 A. Yes.
17 Q. -- diversion squads?
18 In what part of your career
19 did you oversee one of these tactical --
20 A. When I was in Atlanta.
21 Q. What was the -- was the task
22 of the tactical diversion squad
23 consistent with what's reflected here?
24 MR. NICHOLAS: Object to the

Page 215

1 form. Scope.
2 THE WITNESS: Yes, generally
3 speaking.
4 BY MR PIFKO:
5 Q. What were you seeking to do
6 as part of that task force -- sorry,
7 tactical diversion squad?
8 MR. NICHOLAS: Object to the
9 form. Object as to scope. And I
10 just want to make it clear that
11 the witness is not speaking as a
12 representative of the DEA or
13 purporting to represent any DEA
14 positions.
15 THE WITNESS: I'm sorry,
16 what was the question?
17 BY MR PIFKO:
18 Q. I was asking what the
19 purpose -- you said you ran one of these
20 tactical diversion squads, correct?
21 A. To be specific, I had a
22 group supervisor who reported directly to
23 me who was the direct supervisor of the
24 tactical diversion squad.

Page 216

1 Q. What was the purpose of the
2 tactical diversion squad that you
3 oversaw?
4 MR. NICHOLAS: Object as to
5 form and scope. And with the same
6 caveat that I just interposed a
7 minute ago.
8 Go ahead.
9 THE WITNESS: And, again,
10 beyond -- going beyond the
11 description I've provided here, I
[REDACTED]

Page 217

[REDACTED]

Page 218

[REDACTED]

Page 220

[REDACTED]

Page 219

[REDACTED]

Page 221

1 BY MR PIFKO:
2 Q. Let's go to Slide 16 -- or
3 Page 16, it says Slide 17.
4 Are you there?
5 A. Yes, sir.
6 Q. Okay. It says, What's being
7 diverted?
8 Do you see that?
9 A. Yes.
10 Q. The biggest threat for
11 diversion is our opioids.
12 Do you see that?
13 A. Yes.
14 Q. Do you agree with that
15 statement?
16 MR. NICHOLAS: Object to the
17 form.
18 THE WITNESS: I agree.
19 BY MR PIFKO:
20 Q. You see here it says, So it
21 happens frequently that you will see
22 someone who was prescribed hydrocodone
23 following an injury or medical
24 intervention for legitimate medical

Page 222

1 purposes but then continues to use and
2 abuse the drug long after the legitimate
3 medical need has passed.
4 Do you see that?
5 A. I do.
6 Q. Do you agree with that
7 statement?
8 A. I believe that could occur,
9 yes.
10 Q. Do you believe that in
11 trying to prevent diversion, you're
12 trying to prevent that from occurring?
13 MR. NICHOLAS: Object to the
14 form. Object as to scope as well.
15 THE WITNESS: So as a
16 wholesale distributor in the
17 environment in which we work and
18 the things that we can and cannot
19 do, I cannot, as a wholesale
20 distributor, prevent a
21 practitioner from continually
22 writing a hydrocodone prescription
23 for a patient who suffered an
24 injury a long time ago but

Page 223

1 continues to write those. There
2 is nothing -- I have no visibility
3 to that patient. I have no
4 visibility to that practitioner.
5 Likewise, I don't see that
6 patient when he walks through the
7 doors at the pharmacy and he
8 interacts with the pharmacist.
9 And I don't see the information
10 that the pharmacy has at their
11 disposal, the pharmacist, in terms
12 of the diagnostic code on that
13 prescription. Of course, there
14 are HIPAA concerns there as well.
15 So our role in the supply
16 chain is fairly limited. I can
17 monitor the orders being placed by
18 that pharmacy, and I can look for
19 orders that meet the definition of
20 suspicious. And if I find those,
21 I can report those to DEA. But to
22 make a connection between that
23 sort of work and me being able to
24 prevent overprescribing and

Page 224

1 potential misuse and abuse,
2 there's clearly things, as a
3 wholesale distributor, that we can
4 and cannot do.
5 And that clinical process
6 and that overprescribing, to the
7 extent that we can impact that by
8 identifying suspicious orders, we
9 do that. But beyond that, there's
10 nothing we can do.
11 BY MR PIFKO:
12 Q. So in identifying suspicious
13 orders, to the extent you can have an
14 impact on that, you try to do that?
15 MR. NICHOLAS: Object to the
16 form. And scope. Object to the
17 form.
18 THE WITNESS: Again, as a
19 wholesale distributor, we have a
20 view into the data that that
21 pharmacy, the consumption data,
22 the products that that pharmacy is
23 ordering from us. And based upon
24 that data, we can make a

Page 225

1 determination if an order is
2 suspicious.
3 But to be clear, even an
4 order that's found to be
5 suspicious and rejected by us,
6 there is not an equation between
7 finding an order suspicious and
8 diversion. They're separate.
9 They're separate concepts. There
10 could be an order that we find as
11 suspicious where there's
12 absolutely no diversion taking
13 place.
14 And so, again, as a
15 wholesale distributor, our
16 capabilities are somewhat narrow
17 in this respect.
18 BY MR PIFKO:
19 Q. The first question here on
20 this note here says, And what's being
21 diverted?
22 Agree?
23 A. Yes.
24 Q. And the heading of the

Page 226

1 slide, Is Most Commonly Diverted Drugs,
2 right?
3 A. Yes.
4 Q. You're talking about
5 diverted drugs, right, in this slide?
6 A. We're talking about the most
7 commonly diverted drugs, yes.
8 Q. And then you're talking
9 about the biggest threat for diversion
10 are opioids.
11 Do you see that?
12 A. Yes.
13 Q. So you then make the
14 linkage, you talk about -- you then
15 present the sentence I just read, about
16 someone who is prescribed hydrocodone
17 following an injury or medical
18 intervention for medical -- legitimate
19 medical purposes but then continues to
20 use and abuse the drug long after the
21 legitimate medical need has passed.
22 Why did you feel that you
23 wanted to communicate that information to
24 the people at this conference in

Page 227

1 connection with the discussion of
2 commonly diverted drugs?
3 MR. NICHOLAS: Object to the
4 form. Objection as to scope.
5 THE WITNESS: Again, this is
6 one slide of many where my goal
7 here was to inform and educate our
8 sales staff. And so that was the
9 intent of this presentation, to
10 make our sales staff aware, who
11 may not be aware, of some of the
12 finer points around diversion.
13 Maybe they read about opioid
14 abuse, maybe there's some other
15 general knowledge they have.
16 Here is simply an attempt by
17 me to describe some of the drugs
18 that are abused, and also a
19 possible scenario on how that
20 abuse might occur. There could be
21 many other scenarios. But this
22 was the goal and the intent and
23 the reasons behind the statement.
24 BY MR PIFKO:

Page 228

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 229

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 230

Page 232

Year	Value
1990	Low
1991	Low
1992	Low
1993	Low
1994	Low
1995	Low
1996	Low
1997	Low
1998	Low
1999	Low
2000	High
2001	Low
2002	Low
2003	Low
2004	Low

[illegible]

Page 231

Page 233

[illegible]

Category	Percentage
1	10
2	10
3	10
4	10
5	10
6	10
7	10
8	10
9	10
10	10
11	10
12	10
13	10
14	10
15	10
16	10
17	10
18	10
19	10
20	10
21	10
22	10
23	10
24	10
25	10
26	10
27	10
28	10
29	10
30	10
31	10
32	10
33	10
34	10
35	10
36	10
37	10
38	10
39	10
40	10
41	10
42	10
43	10
44	10
45	10
46	10
47	10
48	10
49	10
50	10
51	10
52	10
53	10
54	10
55	10
56	10
57	10
58	10
59	10
60	10
61	10
62	10
63	10
64	10
65	10
66	10
67	10
68	10
69	10
70	10
71	10
72	10
73	10
74	10
75	10
76	10
77	10
78	10
79	10
80	10
81	10
82	10
83	10
84	10
85	10
86	10
87	10
88	10
89	10
90	10
91	10
92	10
93	10
94	10
95	10
96	10
97	10
98	10
99	10
100	10

Page 234

[REDACTED]

Page 236

[REDACTED]

Page 235

[REDACTED]

Page 237

[REDACTED]

Page 238

1 Q. Let's talk about the
2 physical red flags of diversion. Go to
3 the next page.
4 It shows a long line of
5 people outside a pharmacy.
6 Why is that a red flag?
7 A. Again, we've all been to
8 pharmacies and have picked up
9 prescriptions; and any prescription that
10 I've ever picked up, I don't recall
11 seeing a long line of patrons outside.
12 So just for the sheer fact alone that
13 it's something that you wouldn't
14 typically see.
15 That being said, again, this
16 presentation is a little dated. I think
17 that some of these red flags were
18 probably more relevant some time ago. I
19 don't think that -- that sort of activity
20 there would even be more rare in these
21 days.
22 Q. The next slide has some
23 license plates, and it talks about --
24 well, you say, I was always amazed, in my

Page 239

1 former position with DEA in Atlanta, when
2 we would be observing the activities at a
3 particular pharmacy and you would see
4 vehicles from Tennessee, West Virginia
5 and Virginia show up at the pharmacy,
6 typically with more than one person in
7 the vehicle, where the occupants of the
8 vehicle would go in, fill a prescription,
9 and then head right back to the highway
10 in the direction of their home state.
11 Do you see that?
12 A. I do.
13 Q. That's a red flag of
14 diversion?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: Yes.
18 BY MR PIFKO:
19 Q. And why is that?
20 A. So when I go to fill a
21 prescription, you know, unless there's
22 some hard-to-receive medication, I'm
23 going to go to a place that's convenient
24 to my home or my office.

Page 240

1 For people to travel great
2 distances to receive -- or to have
3 prescriptions filled would, therefore, be
4 a red flag.
5 Q. And in giving this
6 presentation and making these examples,
7 these are things that you wanted the
8 salespeople who are visiting the
9 pharmacies in connection with their jobs,
10 you wanted them to be able to observe
11 these things so they could report it back
12 to the company?
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: We wanted them
16 to be knowledgeable about the red
17 flags. We wanted them to, if they
18 were to make these observations or
19 other observations that somehow
20 seemed unusual to them, we wanted
21 them to collect that information
22 and pass it back to us in the
23 diversion control section so that
24 we could follow up, yes.

Page 241

1 BY MR PIFKO:
2 Q. And you believe that by them
3 presenting that information, it can aid
4 the company in preventing diversion,
5 correct?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: By training
9 our diversion -- I mean, by
10 training our sales staff, I'm
11 sorry, this was just another step
12 that we took that we felt was
13 required to fulfill our
14 responsibilities under the
15 regulations.
16 BY MR PIFKO:
17 Q. Is this a step that was
18 added to your process?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: There was some
22 training that took place of our
23 sales staff. I believe I saw, in
24 the past, other PowerPoints that

<p style="text-align: right;">Page 242</p> <p>1 were presented. But I can't talk 2 about the specifics in terms of 3 who and when that was done. 4 BY MR PIFKO: 5 Q. Well, when you came into the 6 position, you undertook an effort to 7 become familiar with what the protocols 8 and processes were, correct? 9 MR. NICHOLAS: Object to the 10 form. Asked and answered a number 11 of times. 12 THE WITNESS: When I joined, 13 I tried to become aware of as much 14 as I could around the entire 15 diversion control program. 16 BY MR PIFKO: 17 Q. And was there any effort in 18 2015 -- or, sorry, 2014, when you joined 19 the company, to collect that kind of 20 information and put it in a usable form? 21 MR. NICHOLAS: Objection. 22 Outside the scope. 23 THE WITNESS: Could you 24 define your question a little bit</p>	<p style="text-align: right;">Page 244</p> <p>1 completely understanding. 2 Did the company have other 3 information like this that it 4 shared with its sales executives? 5 BY MR PIFKO: 6 Q. It's okay. Sorry that you 7 don't understand. 8 A. Sure. Thanks. 9 Q. This is after you joined the 10 company, right? 11 A. Yes. 12 Q. You gave this presentation? 13 A. I did. 14 Q. You had never given this 15 presentation before, right? 16 A. Correct. 17 Q. So my question is, before 18 you had given this presentation, were you 19 aware of whether there was any effort by 20 the company to obtain this type of 21 red-flag information from sales 22 associates and use it in their efforts to 23 prevent diversion? 24 MR. NICHOLAS: Well,</p>
<p style="text-align: right;">Page 243</p> <p>1 more? Because it's a little bit 2 open-ended. 3 BY MR PIFKO: 4 Q. These red flags of diversion 5 we're talking about, and specifically 6 we're talking about the training that was 7 done and how sales associates can make 8 observations that could help the company 9 in its efforts to prevent diversion. 10 And what I'm asking you is 11 whether you're -- if you're aware of 12 whether the company had any processes or 13 procedures to obtain and use that 14 information, in 2014, to prevent 15 diversion? 16 MR. NICHOLAS: Objection. 17 Form. And outside the scope. 18 THE WITNESS: So I guess I'm 19 a little confused, because this 20 would be an example of the 21 training that we provided to our 22 sales staff. 23 And maybe I'm missing 24 something. I'm still not</p>	<p style="text-align: right;">Page 245</p> <p>1 objection to the form. And to the 2 scope. And I think it's a 3 misleading question in light of 4 what the witness has just said 5 back to you. 6 THE WITNESS: As I responded 7 previous, there was some training 8 that was done, prior to my 9 arrival, of the sales staff. And 10 I remember seeing some 11 documentation, whether it was a 12 PowerPoint presentation, I don't 13 recall specifically what that was, 14 where similar training was 15 provided to our sales staff. 16 I can't really comment on 17 the specific content at this 18 point, because it was something 19 that I viewed among everything 20 else around our diversion control 21 program when I walked through the 22 doors. 23 BY MR PIFKO: 24 Q. Do you know if there were</p>

<p style="text-align: right;">Page 246</p> <p>1 any systems in place to collect 2 information and use it at the time that 3 you joined, that type of information? 4 MR. NICHOLAS: Objection. 5 Form. Scope. And there was 6 questioning on this yesterday of a 7 witness for whom this was within 8 the scope of his 30(b)(6) 9 deposition. 10 THE WITNESS: Again, collect 11 this type of information. So 12 diversion red flags for sales 13 executives. Again, my response 14 would be the same. I recall some 15 training that was given. The 16 content of the training, I 17 don't -- I don't recall. 18 BY MR PIFKO: 19 Q. My question is not about the 20 training. It's about whether there was 21 processes and protocols in place to use 22 information that sales associates might 23 have provided from these red flags of 24 diversion. That's what I'm asking you.</p>	<p style="text-align: right;">Page 248</p> <p>1 (Whereupon, 2 AmerisourceBergen-May Exhibit-10, 3 ABDCMDL 00159072, was marked for 4 identification.) 5 - - - 6 BY MR PIFKO: 7 Q. I'm handing you what's 8 marked as Exhibit-10. Sorry, I handwrote 9 the date on the copy, I thought it was 10 mine. That's the only writing that's on 11 there. 12 For the record, this is a 13 document Bates labeled ABDCMDL 00159072. 14 Take a moment to review this 15 and let me know when you're done. 16 For the record, it's dated 17 October 6th, 2016. The custodian is 18 David May. The file name is NADDI 19 slides. 20 A. Okay. 21 Q. Have you seen this before? 22 A. I recognize the content as 23 content that I delivered to a NADDI 24 training conference, NADDI being National</p>
<p style="text-align: right;">Page 247</p> <p>1 MR. NICHOLAS: Objection. 2 BY MR PIFKO: 3 Q. And to be clear, I'm asking 4 you in your personal capacity. 5 MR. NICHOLAS: Okay. 6 Objection. Asked and answered a 7 number of times. This is 8 repetitive. 9 THE WITNESS: In terms of 10 the latter part of your question, 11 whether there were protocols in 12 place, I don't know. 13 MR PIFKO: Let's take a 14 break. 15 VIDEO TECHNICIAN: Going off 16 record. 2:17 p.m. 17 - - - 18 (Whereupon, a brief recess 19 was taken.) 20 - - - 21 VIDEO TECHNICIAN: We're 22 back on record. The time is 2:32 23 p.m. 24 - - -</p>	<p style="text-align: right;">Page 249</p> <p>1 Association of Drug Diversion 2 Investigators. 3 Q. What was the purpose of this 4 presentation? 5 A. Again, it was intended to be 6 educational for the law enforcement 7 community about who wholesale 8 distributors were and how we could assist 9 them in their efforts. 10 Q. This is a presentation that 11 you gave to that organization on or 12 around October 2016? 13 A. So I've given two 14 presentations. I believe this is the 15 first presentation, yes. 16 Q. And you believe it was some 17 time in October 2016? 18 A. I don't have anything that's 19 dated, but -- I'd have to actually 20 confirm the date unless there's some 21 other document you can point me to that I 22 can confirm the date. 23 Q. I can just tell you that the 24 data associated with the document said</p>

Page 250

1 that it was dated October 6th, 2016.
2 A. So let's assume it's around
3 that time period.
4 If I created the document,
5 then, presumably, it would have been in
6 relation time-wise to when I gave the
7 presentation.
8 Q. Let's go to -- well, the
9 first slide.
10 Do you see the language on
11 the first page here in the notes,
12 McKesson, Cardinal and AmerisourceBergen
13 have a combined market share in excess of
14 90 percent?
15 A. Yes.
16 Q. Do you agree with that
17 statement?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Again, I would
21 have researched that at that time
22 period and derived information
23 from others at the time period
24 when this was given.

Page 251

1 I recognize that the
2 information I received, I assume
3 that it was correct, that was
4 provided to me. And it's a
5 general estimate.
6 BY MR PIFKO:
7 Q. Do you recall before we were
8 talking about market share?
9 A. I do.
10 Q. And I had a question about
11 whether if you believed that the three
12 distributors with almost all of the
13 market share played any role in the
14 opioid epidemic.
15 Do you recall that
16 discussion?
17 A. I do.
18 Q. So now seeing the data, do
19 you believe that the entities who
20 controlled 90 percent of the
21 pharmaceutical distribution market had an
22 ability to take actions that would have
23 reduced the impact on the opioid crisis?
24 MR. NICHOLAS: Object to the

Page 252

1 form. Objection to the scope.
2 Asked and answered.
3 THE WITNESS: And I would
4 rely upon my previous response as
5 well. And restate it.
6 I can't sit here and speak
7 to the programs or market share
8 relative to Cardinal and McKesson.
9 I can say that, regardless of
10 market share, regardless of being
11 AmerisourceBergen or one of the
12 other 800 wholesale distributors,
13 it's not about market share, it's
14 really about everyone doing what
15 they're supposed to be doing.
16 BY MR PIFKO:
17 Q. And that's how we prevent
18 diversion and prevent the opioid crisis?
19 MR. NICHOLAS: Object to the
20 form. Object to the scope.
21 THE WITNESS: I'll rely on
22 my previous response.
23 BY MR PIFKO:
24 Q. Well, you said regardless of

Page 253

1 market share, regardless of being
2 AmerisourceBergen or one of the other 800
3 wholesale distributors, it's not about
4 market share, it's about, really,
5 everyone doing what they're supposed to
6 be doing.
7 What's everybody supposed to
8 be doing?
9 MR. NICHOLAS: Object to the
10 form. Object to the scope.
11 Object to the cross-examination of
12 the witness by his very last
13 answer. I'll object.
14 THE WITNESS: Again, from
15 your question, I understand you to
16 mean that, because of market
17 share, that that market share
18 somehow gives us some influence
19 over the opioid issue. And my
20 statement is that it's not a
21 question of market share. And at
22 AmerisourceBergen, we have
23 requirements that are put upon us
24 and we fulfill those requirements.

Page 254

1 BY MR PIFKO:
2 Q. And if everybody is doing
3 what they can be doing, that's how you
4 impact the crisis, correct?
5 MR. NICHOLAS: Well, object
6 to the form. Object to the scope.
7 Object to the fact that you've
8 asked the question about seven or
9 eight times, probably more,
10 probably fifteen or twenty times
11 today. Asked and answered.
12 THE WITNESS: I think I
13 responded several times to this.
14 And, again, I would just
15 emphasize that throughout the
16 closed system, there are different
17 requirements imposed upon
18 different registrants. And, yes,
19 if all registrants comply with
20 their requirements, then it would
21 have a positive effect on
22 diversion control.
23 BY MR PIFKO:
24 Q. Let's go to Slide 5, which

Page 255

1 is on Page 5.
2 Are you there?
3 A. Yes.
4 Q. There's a picture of a form
5 and then a discussion below about the
6 information you collect from your
7 customers pursuant to the "know your
8 customer" requirement.
9 A. Yes.
10 Q. Do you see that?
11 Is this the Form 590?
12 A. Yes.
13 Q. And let's go up to the
14 previous slide. Page 4.
15 You have a comment here that
16 says, You don't see specific reference to
17 knowing your customer in the law and
18 regulations, but you do see repeated
19 references to the concept in the final
20 decisions and orders issued relative to
21 actions taken by DEA against registrants,
22 as well as in public training sessions by
23 DEA.
24 Do you see that?

Page 256

1 A. I do.
2 Q. Do you agree with that
3 statement?
4 MR. NICHOLAS: Object to the
5 form.
6 THE WITNESS: I do agree
7 with that statement in the context
8 of this training. I would also
9 say that you see reference to due
10 diligence in other areas as well;
11 namely being the limited guidance
12 DEA has furnished in the form of
13 those memorandum that were shared.
14 BY MR PIFKO:
15 Q. And you believe knowing your
16 customer and due diligence is part of the
17 requirement to maintain effective
18 controls to prevent diversion?
19 MR. NICHOLAS: Object to the
20 form. Object to the scope.
21 THE WITNESS: I'm so sorry,
22 can you repeat your question,
23 please?
24 BY MR PIFKO:

Page 257

1 Q. Do you believe that knowing
2 your customer and due diligence is part
3 of the requirement to maintain effective
4 controls to prevent diversion?
5 MR. NICHOLAS: Object to the
6 form. Object to the scope.
7 THE WITNESS: I believe that
8 knowing your customer and due
9 diligence is an aspect of
10 AmerisourceBergen's program to
11 satisfy their requirements.
12 BY MR PIFKO:
13 Q. Do you believe that knowing
14 your customer is required under the law?
15 MR. NICHOLAS: Object to the
16 form. Object to the scope. And
17 he's not a lawyer.
18 THE WITNESS: Again, without
19 giving a legal opinion, we have,
20 as part of our program that we
21 administer, our diversion control
22 program, a "know your customer"
23 component, which we exercise in
24 order to accomplish due diligence.

<p style="text-align: right;">Page 258</p> <p>1 BY MR. PIFKO:</p> <p>2 Q. Do you believe that's a</p> <p>3 necessary component of the program in</p> <p>4 order for it to be effective?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form. Object to the scope.</p> <p>7 THE WITNESS: I believe that</p> <p>8 it's a requirement that we have at</p> <p>9 AmerisourceBergen, and it's one</p> <p>10 that we've had in place and it's</p> <p>11 part of our program.</p> <p>12 BY MR PIFKO:</p> <p>13 Q. You don't have a position</p> <p>14 about whether it's required?</p> <p>15 MR. NICHOLAS: Object to the</p> <p>16 form. Object to the scope. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: So, again, I</p> <p>19 can't furnish a legal opinion.</p> <p>20 What I can say is that I</p> <p>21 believe we have and should have a</p> <p>22 "know your customer" component;</p> <p>23 and we do have a "know your</p> <p>24 customer" component at our company</p>	<p style="text-align: right;">Page 260</p> <p>1 with pharmacists and doctors.</p> <p>2 Do you see that?</p> <p>3 A. I do.</p> <p>4 Q. Did I read that correctly?</p> <p>5 A. You did.</p> <p>6 Q. Is that a statement that you</p> <p>7 made at the time?</p> <p>8 A. It was.</p> <p>9 Q. Did you present this to</p> <p>10 the -- at the conference, did you make</p> <p>11 that statement at the conference?</p> <p>12 A. I don't know if I made that</p> <p>13 precise statement. These are notes that</p> <p>14 I used.</p> <p>15 Q. Do you believe these</p> <p>16 statements to be true?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form.</p> <p>19 But go ahead.</p> <p>20 THE WITNESS: I do.</p> <p>21 BY MR PIFKO:</p> <p>22 Q. When you say "the overall</p> <p>23 tightening of the prescription opioid</p> <p>24 market has led to increased heroin</p>
<p style="text-align: right;">Page 259</p> <p>1 as part of the diversion control</p> <p>2 program.</p> <p>3 BY MR PIFKO:</p> <p>4 Q. Let's go to Page 19.</p> <p>5 Are you there?</p> <p>6 A. I am.</p> <p>7 Q. So the notes that you wrote</p> <p>8 here say, Final point, we must be mindful</p> <p>9 of our actions in addressing the epidemic</p> <p>10 of prescription drug abuse. I will use</p> <p>11 the relationship between prescription</p> <p>12 opioids and heroin as an example. When I</p> <p>13 was overseeing the drug task force in</p> <p>14 Charlotte ten years ago, there was a rise</p> <p>15 in the influence of Mexican DTOs in</p> <p>16 growing the heroin market. The issue was</p> <p>17 overwhelming and the cross-culture of</p> <p>18 people that were using heroin amazed me.</p> <p>19 Over the last couple of years, the</p> <p>20 overall tightening of the prescription</p> <p>21 opioid market has led to increased heroin</p> <p>22 abuse. Having confronted both issues, I</p> <p>23 believe that our chances for success are</p> <p>24 much better in the public arena working</p>	<p style="text-align: right;">Page 261</p> <p>1 abuse," what do you mean by that?</p> <p>2 A. I think there's been several</p> <p>3 actions that have been taken where it's</p> <p>4 becoming more difficult for people to</p> <p>5 receive prescription opioids over time.</p> <p>6 And there are a number of different</p> <p>7 reasons why.</p> <p>8 I think that people who may</p> <p>9 be addicted and can no longer get a</p> <p>10 prescription opioid, can that cause them</p> <p>11 to then go to the illegal market? I</p> <p>12 think it can. Has that caused folks to</p> <p>13 do that? I think it has.</p> <p>14 I guess my only caveat here</p> <p>15 is, I can't estimate to what extent that</p> <p>16 this is -- where this is prevalent.</p> <p>17 Q. You thought this was a</p> <p>18 significant enough point to make the</p> <p>19 conclusion of your presentation, agree?</p> <p>20 MR. NICHOLAS: Object to the</p> <p>21 form.</p> <p>22 THE WITNESS: I think it was</p> <p>23 one of many points I made during</p> <p>24 the presentation.</p>

Page 262

1 BY MR PIFKO:
2 Q. This was an impactful point
3 you wanted to make at the end of the
4 presentation, agree?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: I think all of
8 the information I provided during
9 the presentation was important for
10 the audience, including this
11 information.
12 BY MR PIFKO:
13 Q. Mexican DTO, that just means
14 drug trafficking organization?
15 A. Correct.
16 Q. Do you know who the sponsors
17 of NADDI are?
18 A. Not off the top of my head,
19 I do not.
20 Q. Do you know if prescription
21 drug manufacturers participate in that
22 organization?
23 MR. NICHOLAS: Object to the
24 form. Objection. Asked and

Page 263

1 answered.
2 THE WITNESS: I know that
3 there are participants both from
4 the private and public sector.
5 BY MR PIFKO:
6 Q. Let's go back to Slide 5.
7 This is the Form 590.
8 Is the Form 590 an important
9 part of AmerisourceBergen's diversion
10 control program?
11 MR. NICHOLAS: Object to the
12 form. Objection as to scope.
13 THE WITNESS: I would say
14 that all aspects of our program
15 are important. I couldn't -- I
16 couldn't categorize this as more
17 or less important than other
18 facets of our program. It's
19 another facet of our program.
20 BY MR PIFKO:
21 Q. So this talks about the
22 types of information that are sought in
23 the form.
24 Do you see that?

Page 264

1 A. I do.
2 Q. In the interest of time, I
3 won't necessarily read over all of it.
4 A. Okay.
5 Q. But what does the company do
6 with this information?
7 MR. NICHOLAS: Object as to
8 form. And scope.
9 THE WITNESS: So when we are
10 onboarding a customer, this
11 information is collected during a
12 site visit. And then a member of
13 the team will receive this
14 information and they'll go through
15 the form. We have a related form
16 that's a checklist. We'll
17 validate, to the extent possible,
18 the contents of the form.
19 And so we would validate
20 licenses, where we ask the
21 questions. We would collect
22 information relative to certain
23 estimates of drug usage. We would
24 ask about prior disciplinary

Page 265

1 action. And we would then, you
2 know -- again, use public
3 resources to collect and validate
4 the information that's on the
5 form, wherever possible; go to the
6 various boards, Board of Pharmacy,
7 boards of medicine, if we have
8 physician information, check for
9 prior disciplinary action.
10 And after that process is
11 complete, we would make a decision
12 whether we wanted to continue with
13 the onboarding of the prospective
14 customer.
15 BY MR PIFKO:
16 Q. Is there any effort, within
17 the time frame that you're the 30(b)(6)
18 witness, to update that information after
19 a customer is onboarded?
20 A. There are times that we
21 update this information, yes. There may
22 be changes at the location. If there is
23 a change of address, of course that would
24 affect the license of the location, so we

<p style="text-align: right;">Page 266</p> <p>1 would need to update that information. 2 If there was a change of 3 ownership and the location didn't move, 4 but we needed to get the new information 5 on ownership. And we would also do it on 6 an as-needed bases. For example, if we 7 were involved with the customer, in terms 8 of trying to mitigate some red flag 9 information, we may request an updated 10 form. 11 Q. Let's turn to Slide 17. 12 I'll read you from the notes 13 here. This is -- the image on Slide 17 14 is an image of The Controlled Substances 15 Act closed system of distribution, agree? 16 A. Yes. 17 Q. You have a statement here 18 that says, I truly believe that if we all 19 live up to our individual 20 responsibilities and obligations, we will 21 collectively have a huge, positive impact 22 on the prescription abuse issue. On the 23 other hand, any weak links in the system 24 will cause all of us to become less</p>	<p style="text-align: right;">Page 268</p> <p>1 BY MR. PIFKO: 2 Q. You then say, To that end, a 3 wholesaler is responsible for knowing the 4 customer and monitoring the controlled 5 substances and listed chemicals shipped 6 to that customer, rejecting and reporting 7 suspicious orders. 8 Do you see that? 9 A. I do. 10 Q. Do you agree with that 11 statement? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: I agree with 15 the statement. 16 - - - 17 (Whereupon, 18 AmerisourceBergen-May Exhibit-11 19 ABDCMDL 00140843-44, was marked 20 for identification.) 21 - - - 22 BY MR. PIFKO: 23 Q. I'm handing you what is 24 marked as Exhibit-11. For the record,</p>
<p style="text-align: right;">Page 267</p> <p>1 effective. 2 Do you see that? 3 A. I do. 4 Q. Do you agree with that 5 statement? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: I do. And I 9 guess in the context, again, of 10 this meeting, if we start to make 11 this a full statement, and, I 12 guess, just as a point of 13 demonstrating our consistency, you 14 know, we all -- registrants have 15 regulations from requirements 16 imposed upon us by virtue of our 17 role in the system. I think I've 18 answered that several times today. 19 And I believe that if we all 20 live up to those roles, we'll 21 collectively have a positive 22 impact. I believe that to be 23 true, and I think I've been pretty 24 consistent about that.</p>	<p style="text-align: right;">Page 269</p> <p>1 it's a two-page document, Bates labeled 2 ABDCMDL 00140843 through 44. 3 Have you seen this before? 4 A. Not directly on here. But I 5 am included on distribution to CSRA OMP, 6 and so I have some recollection of this 7 e-mail. 8 Q. Well, let's just talk 9 generally. You can put this document 10 aside for a minute. 11 A. Sure. 12 Q. Do you recall there being 13 issues with deficiencies with the Form 14 590s? 15 A. I do recall, generally 16 speaking, there have been some occasions 17 where we'll have forms where they are not 18 completely legible, and there may have 19 also been occasions where not all of the 20 responses were provided. 21 Q. And the company was 22 undertaking efforts to try to address 23 these deficiencies in 2016; is that 24 correct?</p>

Page 270

1 MR. NICHOLAS: Object to the
2 form of the question, as it wasn't
3 his testimony.
4 Go ahead.
5 THE WITNESS: Again, I guess
6 I'll comment that, generally
7 speaking, we're always trying to
8 be vigilant to maintain our
9 processes. So I wouldn't identify
10 it as any particular time. It's
11 an ongoing process.
12 - - -
13 (Whereupon,
14 AmerisourceBergen-May Exhibit-12,
15 ABDCMDL 00159415-16, was marked
16 for identification.)
17 - - -
18 BY MR PIFKO:
19 Q. I'm handing you what's
20 marked as Exhibit-12. This document is
21 Bates labeled ABDCMDL 00159415 and 16.
22 Have you seen this document
23 before?
24 And you can continue to

Page 271

1 review it, I'm just trying to speed
2 things along for everybody.
3 A. I have, yes.
4 Q. Do you know what this is?
5 A. It's an e-mail string
6 regarding the CSRA 590 validation
7 project.
8 Q. And the e-mail in the bottom
9 of the first page, you are cc'd on there,
10 correct?
11 A. Yes.
12 Q. It's dated August 5th, 2016,
13 correct?
14 A. Correct.
15 Q. Do you recall receiving this
16 e-mail?
17 A. I recognize the content and
18 recall the e-mail.
19 Q. When was the last time you
20 saw this e-mail?
21 A. I haven't seen it recently.
22 Probably at that time.
23 Q. Is this a true and correct
24 copy of the e-mail?

Page 272

1 A. Yes.
2 Q. It says here that, Over the
3 past several months, the CSRA diversion
4 control team -- that's your team,
5 correct?
6 A. Yes.
7 Q. -- has been working on the
8 CSRA 590 validation project. This
9 project was initiated to validate that
10 all current ABDC customers authorized to
11 purchase controlled substances have the
12 required due diligence documentation in
13 file.
14 Do you see that?
15 A. Yes.
16 Q. Do you agree that that was
17 what the project was?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Yes.
21 BY MR PIFKO:
22 Q. It says, The first phase of
23 this project was to conduct a full review
24 of every ABDC customer authorized to

Page 273

1 purchase controlled substances and
2 identify any with deficiencies.
3 Did I read that right?
4 A. Yes.
5 Q. This initial phase has been
6 completed, and a substantial number of
7 customers have been identified who will
8 be required to have their 590
9 documentation updated. See attached
10 spreadsheet.
11 Do you see that?
12 A. I do.
13 Q. Then you write back
14 approximately a year later.
15 Do you see the top e-mail
16 from you dated July 7th, 2017?
17 A. Yes.
18 Q. And you say, All, I wanted
19 to check in with you on the progress
20 being made on this project.
21 Unfortunately, as of this writing, we
22 have only received about 10 percent of
23 the required customer due diligence
24 documents. If you recall, we originally

Page 274

1 set a June 30th -- set June 30th as a
2 completion date for the continued -- let
3 me start over on that sentence.
4 If you recall, we originally
5 set June 30th as a completion date and
6 the continued deficiency puts us at risk
7 with regulators.
8 Do you see that?
9 A. I do.
10 Q. Do you agree with that
11 statement?
12 MR. NICHOLAS: Object to the
13 form.
14 THE WITNESS: Yes.
15 BY MR PIFKO:
16 Q. And you wrote that in this
17 e-mail?
18 A. Yes.
19 Q. Do you know how many 590
20 forms were missing or had missing
21 information?
22 A. I believe there was
23 approximately 3,000.
24 But I do want to get back to

Page 275

1 one thing while you were reading there.
2 You stated, when you started reading the
3 second part of this e-mail, that almost a
4 year later I responded. And I just want
5 to address that.
6 This was an e-mail that was
7 sent to sales executives. I don't want
8 to leave you with the impression that
9 there were not other multiple e-mails
10 related to this e-mail and dispel that
11 notion that there was this one e-mail and
12 then there was this one e-mail to these
13 sales executives.
14 I don't know what other
15 e-mails are out there, but I know that
16 there was a lot of communication relative
17 to this project.
18 Q. Okay. Understood.
19 All I wanted to point out
20 with the year date difference is that
21 we're a year later, and that a year later
22 after sending the original e-mail about
23 this project, only 10 percent of the
24 required documents had been obtained,

Page 276

1 agree?
2 MR. NICHOLAS: Object to the
3 form as to his agreeing as to what
4 you were trying to point out.
5 THE WITNESS: I understood
6 that part of your question.
7 But I didn't want to, again,
8 leave the impression that an
9 e-mail was sent on August 5th and
10 then I didn't respond until a year
11 later.
12 BY MR PIFKO:
13 Q. I didn't think that that was
14 the case.
15 - - -
16 (Whereupon,
17 AmerisourceBergen-May Exhibit-13,
18 Tab Printout; Sales Assignment,
19 was marked for identification.)
20 - - -
21 BY MR PIFKO:
22 Q. I just put in front of you
23 Exhibit-13.
24 You see that this e-mail

Page 277

1 references having an attachment of a 590
2 validation master spreadsheet --
3 A. Yes.
4 Q. -- dated July 28th, 2016?
5 Do you see that? You've got
6 to go to Exhibit-12, if you look at the
7 header of the e-mail.
8 A. Yes. Attachment. I see it.
9 Q. So if you go over to
10 Exhibit-13, there were three tabs in the
11 document, or four tabs. This is one of
12 the tabs, it's called, Sales Assignment.
13 Do you know what this tab
14 reflects?
15 MR. NICHOLAS: Where is the
16 tab? I'm sorry.
17 MR PIFKO: It was produced
18 natively, but what we do when we
19 produce these is Bates label -- to
20 use it as an exhibit, the Bates
21 label is at the top and the tab is
22 on a footer on the bottom.
23 THE WITNESS: Again, in the
24 context of this e-mail, and this

Page 278

1 being represented as one of the
2 attachments, this appears to be a
3 list, in the left column, customer
4 DEA number. And we tracked the
5 DEA registration.
6 And then it tells the
7 various sales folks that are
8 assigned to the registration. And
9 that would have been produced to
10 help us organize this work.
11 BY MR PIFKO:
12 Q. And this is a list of all
13 the customers whose Form 590 was missing,
14 correct, or --
15 MR. NICHOLAS: Object to the
16 form.
17 BY MR. PIFKO:
18 Q. -- had deficient
19 information?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: Again, I know
23 we compiled the list. I know we
24 keep a spreadsheet of it. I'm not

Page 279

1 sure, in looking at this, you
2 know, multi-page document, if this
3 is an accurate description.
4 I guess what I'll say is
5 that -- well, a couple of things
6 that I want to put in context
7 here.
8 First, in terms of this work
9 itself, and maybe I misinterpreted
10 your question, but this would
11 represent -- this project would
12 represent cases where we could not
13 locate due diligence files, in
14 terms of our customer base, and as
15 a result of that, where we could
16 not locate those due diligence
17 files, we initiated this project.
18 And I guess that's
19 important, I guess, to realize
20 as -- I don't want to leave the
21 impression that we didn't have due
22 diligence for these customers. I
23 want to make sure that we all
24 understand that this project

Page 280

1 revolved around finding situations
2 where we didn't have the
3 documentation in the file. And
4 that's what was the focus of the
5 file.
6 So that's the first --
7 BY MR PIFKO:
8 Q. What's the difference
9 between not having the information and it
10 not being in the file?
11 MR. NICHOLAS: Object to the
12 form.
13 BY MR PIFKO:
14 Q. If it's not in the file, you
15 don't have the information, agree?
16 If I don't have anything in
17 my hand, I don't have anything in my
18 hand.
19 A. So --
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: So, again, I
23 just want to make sure that we
24 understand the context of the

Page 281

1 project.
2 And that is that we
3 identified a number of accounts
4 where we couldn't locate the
5 information.
6 My point there is I'm not
7 acknowledging that there were not
8 due diligence efforts made in
9 documentation collected. At the
10 time of this review, we couldn't
11 find that information. And that's
12 what this project involved.
13 So that's just to put this
14 in context.
15 The second part, again, do
16 these represent a part of or the
17 totality of those accounts, I
18 can't say by looking at this
19 stack.
20 BY MR PIFKO:
21 Q. Is that stack pretty large?
22 MR. NICHOLAS: Object to the
23 form.
24 THE WITNESS: Again, I think

Page 282

1 you asked a question about how
2 many accounts there were. I
3 think, to my recollection, there
4 were roughly 3,000 when we
5 initiated that, to the best of my
6 recollection.
7 BY MR PIFKO:
8 Q. That stack of customers,
9 though, how thick is that in front of
10 you?
11 MR. NICHOLAS: Well, object
12 to the form.
13 BY MR PIFKO:
14 Q. Can you hold it up?
15 A. It's about an inch thick, I
16 guess.
17 Q. Can you hold it up?
18 A. Sure.
19 MR. NICHOLAS: Objection.
20 Object to the form.
21 BY MR PIFKO:
22 Q. Thank you.
23 MR. NICHOLAS: Showboating.
24 BY MR PIFKO:

Page 283

1 Q. If I tell you that the
2 number of files where you could not
3 obtain the due diligence information as
4 of 2016, the number of customers was
5 3,285, would you agree with me?
6 MR. NICHOLAS: I'll object
7 to the form. The witness has
8 already given testimony on this.
9 But I'll object to the form of the
10 question.
11 THE WITNESS: My response
12 was I think there was
13 approximately 3,000, so I think
14 that's pretty consistent.
15 BY MR PIFKO:
16 Q. So did you continue to
17 obtain this -- attempt to obtain this
18 information over the years?
19 A. Yes.
20 Q. Do you know what the status
21 of this project was as of 2017?
22 A. I cannot say definitively
23 what the status was in 2017.
24 Q. Do you know if these

Page 284

1 deficiencies have been remedied as of May
2 29th, 2018?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: I think the
6 project, in terms of its
7 completion -- and, again, I have
8 to estimate this -- is in the 60
9 percent range of completion, but
10 that's the best of my knowledge,
11 just sitting here today with no
12 documentation.
13 BY MR PIFKO:
14 Q. At the present time, your
15 estimate, based on your involvement with
16 the project, is that there's still about
17 40 percent of them that have not been
18 rectified yet?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: That's my best
22 estimate, based upon my
23 recollection.
24 BY MR PIFKO:

Page 285

1 Q. Thank you.
2 A. But I think I'm in the
3 ballpark.
4 Q. Do you know when the Form
5 590 process was implemented?
6 A. Not precisely when.
7 Approximately when, I believe it was
8 around 2007, in terms of that particular
9 form. There may have been predecessors
10 that I can't comment on.
11 I'm not the best person to
12 talk about what the due diligence efforts
13 looked like prior to then.
14 - - -
15 (Whereupon,
16 AmerisourceBergen-May Exhibit-14,
17 ABDCMDL 00002232, was marked for
18 identification.)
19 - - -
20 BY MR PIFKO:
21 Q. I'm handing you what's
22 marked as Exhibit-14.
23 For the record, this is a
24 one-page document Bates labeled ABDCMDL

Page 286

1 00002232. It's some e-mails dated
2 December 9th, 2016.
3 Let me know when you're done
4 reviewing this.
5 A. Okay.
6 Q. Have you seen this e-mail
7 before?
8 A. I have, during -- I guess it
9 would be December 9th, 2016.
10 Q. Do you recall the discussion
11 in this e-mail?
12 A. Generally, based upon the
13 content.
14 Q. Is this a true and correct
15 copy of the e-mail?
16 A. Yes.
17 Q. Can you tell me about what's
18 discussed in the e-mail here?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: You know,
22 according to the content here that
23 I'll rely upon, it's an exchange
24 between a member of Purdue's

Page 287

1 compliance group and Eric
2 Cherveny, who works on our
3 diversion control team, about
4 media reports relative to
5 physicians.
6 BY MR PIFKO:
7 Q. Eric says, FYI, Purdue
8 Pharma sends me this list periodically.
9 It's a list that Purdue maintains
10 regarding prescriber action. Not sure
11 how they collect the data. Yellow
12 highlighting indicates new action since
13 the last submission. Blue highlighting
14 indicates a physician who was on a
15 previous report but who has had
16 subsequent action. We need to discuss if
17 we're going to use this list and, if so,
18 how.
19 Do you see that?
20 A. I do.
21 Q. Do you recall getting this
22 list from Purdue Pharma?
23 A. I do not recall whether we
24 did or did not get that list from Purdue

Page 288

1 Pharma. And I'm guessing, from the
2 context here I'm seeing as you just read
3 it, Eric is stating that he doesn't know
4 how they provide the information. But
5 from the lower e-mail, it looks like it's
6 generated from media reporting.
7 Q. Do you recall getting this
8 list and doing anything with it?
9 MR. NICHOLAS: Object to the
10 form of the question. Asked and
11 answered.
12 THE WITNESS: So, yeah, just
13 to repeat my response, I don't
14 know whether we did or did not get
15 a copy of that list.
16 I do know, as part of our
17 program, we do maintain a -- what
18 we refer to as a suspect
19 subscriber list, which is distinct
20 from this list. I don't know if
21 Eric added this information to
22 that list or not at this point.
23 BY MR PIFKO:
24 Q. The suspect subscriber list,

Page 289

1 can you tell me what that is?
2 A. Again, when we receive
3 information relative to doctors, we
4 receive the DEA reports, the register
5 reports, as they come out, where DEA
6 announces their actions they've taken
7 against practitioners.
8 So if we were to receive one
9 of those reports where they've taken an
10 action against a practitioner, we would
11 add that information to the list so that
12 in doing our due diligence, if we came
13 across those doctors, we would have that
14 information.
15 Q. Does AmerisourceBergen --
16 sorry.
17 With respect to the suspect
18 subscriber list, do you know when that
19 effort to collect that list was
20 initiated?
21 MR. NICHOLAS: Objection
22 only as to scope.
23 THE WITNESS: Previous to my
24 arrival. It was -- to my

Page 294

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 295

1 [REDACTED]
2 MR. PIFKO: We're going to
3 take a short break.
4 VIDEO TECHNICIAN: Going off
5 the record. 3:30 p.m.
6 - - -
7 (Whereupon, a brief recess
8 was taken.)
9 - - -
10 VIDEO TECHNICIAN: We're
11 back on record at 3:44 p.m.
12 MR. NICHOLAS: There was
13 testimony in the previous set of
14 questions about a list of --
15 concerning a list of due diligence
16 files that were missing or not
17 available. And there was
18 testimony about the fact that
19 there was approximately 3,000 such
20 documents -- 3,000 such files.
21 There was also testimony
22 about the fact that these files
23 were contained or illustrated or
24 displayed on three different tabs,

Page 296

1 or maybe it was four different
2 tabs.
3 MR. CLUFF: I believe it's
4 four tabs.
5 MR. NICHOLAS: Okay. We
6 have gone back, on the break, we
7 have not talked to the witness
8 about this, and checked the tabs
9 and checked the stack of -- the
10 stack of -- that you displayed,
11 that you gave him, that purports
12 to represent the 3,000 files.
13 This stack is a stack of
14 approximately 13,000 files. It is
15 not -- it does not display the
16 3,000 that you discussed. The
17 3,000 that you discussed are
18 contained in Tabs 1 and Tabs 2,
19 which are identified as a red tab
20 and a blue tab. If you print
21 those out and add them up, it does
22 appear to be about 3,000 or so.
23 So what I'm seeing is that
24 you gave him a list -- a stack of

Page 297

1 13,000, which does not represent
2 what you said it did; you asked
3 him questions about it; and then
4 you even had him hold it up on
5 camera.
6 Now, I'm going to ask you to
7 withdraw the line of questioning.
8 MR. PIFKO: I will not
9 withdraw the line of questioning.
10 MR. NICHOLAS: And I will
11 ask you to correct the record.
12 MR. PIFKO: We can meet and
13 confer about it after this
14 deposition.
15 MR. NICHOLAS: Wait a
16 minute. Hold on.
17 MR. PIFKO: I do not know
18 the facts that you are
19 representing to be true.
20 MR. NICHOLAS: We can check
21 right now. We have it right here.
22 I can show it to you in two
23 seconds. I have the tabs.
24 MR. PIFKO: We can do it off

Page 298

1 the record. I'll be happy to look
2 at it off the record.
3 If you want to go off the
4 record, I can take a look.
5 MR. NICHOLAS: Let's go off
6 the record, and you'll take a look
7 and then you tell me what you want
8 to do about it.
9 VIDEO TECHNICIAN: Going off
10 the record. 3:46 p.m.
11 - - -
12 (Whereupon, a discussion off
13 the record occurred.)
14 - - -
15 VIDEO TECHNICIAN: We're
16 back on record at 3:58 p.m.
17 MR. PIFKO: Let me represent
18 that when we went off the record,
19 counsel for defendants is stating
20 things to be facts, based on their
21 research of documents, in front of
22 the witness and trying to
23 influence the outcome of this
24 deposition and making accusations

Page 299

1 about improper conduct that we, in
2 his mind, allegedly did.
3 I can assure you that we had
4 no intention to misrepresent a
5 document or the record. We asked
6 the witness what it was.
7 And to be frank with you, if
8 you want to cross -- or if you
9 want to direct examine your
10 witness about something
11 afterwards, that is the
12 appropriate way to handle it.
13 And what you've done by
14 making these statements about what
15 facts you believe to be true in
16 front of the witness and in front
17 of all counsel here in the room is
18 you have tainted the process and
19 you testified and you created
20 facts.
21 And that -- you are done
22 with this whole thing. You lost
23 your opportunity to get the
24 witness to say, on his own

Page 300

1 volition, what it is or isn't.
2 MR. NICHOLAS: Okay. Let's
3 make sure the record is clear.
4 MR. PIFKO: It's -- I'm
5 taking this deposition. You're
6 not talking anymore.
7 MR. NICHOLAS: No, no. I'm
8 going to talk, okay?
9 BY MR. PIFKO:
10 Q. Sir, I'm going to hand you
11 Exhibit --
12 MR. NICHOLAS: I'm going to
13 talk. Because you haven't let
14 me -- we went off the record so
15 you --
16 MR. PIFKO: No. No. We're
17 done. You are not talking during
18 this deposition. I am taking this
19 deposition, okay?
20 MR. NICHOLAS: We went off
21 the record so we could show you
22 the basis for why I'm saying --
23 MR. PIFKO: And you did not
24 show an adequate basis.

Page 301

1 MR. NICHOLAS: Well, that's
2 what you say. You looked at it.
3 Now, what you're telling
4 me --
5 MR. PIFKO: And did all of
6 this in front of the witness.
7 This is totally improper.
8 MR. NICHOLAS: I'm going to
9 ask you --
10 MR. PIFKO: I'm not
11 listening to you. It's my
12 deposition. You need to be quiet.
13 If you want to meet --
14 MR. NICHOLAS: Hold on.
15 Hold on.
16 MR. PIFKO: If you want to
17 meet and confer with me about
18 something after this deposition,
19 I'll be happy to listen to you.
20 MR. NICHOLAS: Listen to
21 your question before you say that.
22 Listen to the question you asked
23 on the record.
24 MR. MAHADY: Question: And

Page 302	Page 304
<p>1 this is a list of all -- 2 MR. PIFKO: You're 3 continuing to influence the 4 process -- 5 MR. MAHADY: -- incorrect or 6 deficient -- 7 MR. NICHOLAS: I'll read it. 8 Question by you, Mr. Pifko: 9 And this is all -- and this is a 10 list of all the customers whose 11 Form 590 was missing, correct? Or 12 had deficient information? 13 MR. PIFKO: And then I asked 14 him, is that true? 15 And he can say whatever he 16 can say. If I'm wrong, I'm wrong. 17 He can say whatever he said. He 18 answered. 19 I didn't -- I can't put 20 facts into his mind. 21 MR. NICHOLAS: You 22 deliberately -- 23 MR. PIFKO: I did not 24 deliberately do anything.</p>	<p>1 4 and ignored the summary? 2 MR. PIFKO: We had the 3 summary. And I just read him the 4 summary, and I asked him if that 5 was the number. I read the exact 6 number, you all heard it, 3,285. 7 That was the number. I asked him 8 if that was the number. 9 MR. NICHOLAS: Yes. We're 10 all agreeing that there were 11 approximately -- the record says 12 what it says -- 13 MR. PIFKO: Right. So 14 there's no -- 15 MR. NICHOLAS: -- which is 16 approximately 3,000 files. 17 MR. PIFKO: So there's no -- 18 there's no problem with the 19 record. 20 MR. NICHOLAS: You gave him 21 a stack of 13,000 -- 22 MR. PIFKO: There's no 23 problem with the record. 24 MR. NICHOLAS: -- and asked</p>
Page 303	Page 305
<p>1 MR. NICHOLAS: Not only did 2 you deliberately print the wrong 3 list, but then you had him hold 4 the list up. 5 MR. PIFKO: You have no 6 evidence I deliberately printed 7 anything. 8 MR. NICHOLAS: Are you 9 denying it? 10 MR. PIFKO: Yes. I did not 11 deliberately -- 12 MR. NICHOLAS: Are you 13 denying that you did not know -- 14 you did not know this is the wrong 15 list? 16 MR. PIFKO: I did not 17 deliberately do anything here. 18 MR. NICHOLAS: Do you agree 19 this is the wrong list? 20 MR. PIFKO: No. Based on 21 what you've shown, I do not know 22 that that's the wrong list. 23 MR. MAHADY: So you skipped 24 the first three tabs, went to Tab</p>	<p>1 him if that is the list of 3,000. 2 MR. CLUFF: Let me just ask 3 one question here. 4 Do you agree that that is a 5 tab from the spreadsheet in 6 question? 7 MR. NICHOLAS: It is the 8 wrong -- no. 9 MR. CLUFF: I'm asking just 10 for foundation. 11 That's not in the tab? 12 MR. NICHOLAS: No. 13 MR. CLUFF: That's not in 14 the spreadsheet? 15 MR. MAHADY: It's in the 16 spreadsheet and there's a summary. 17 MR. NICHOLAS: There were -- 18 MR. PIFKO: That's what I'm 19 asking, it was in the spreadsheet. 20 MR. NICHOLAS: -- four tabs. 21 There were four tabs. 22 MR. PIFKO: It doesn't 23 matter -- 24 MR. NICHOLAS: There were</p>

<p style="text-align: right;">Page 306</p> <p>1 four tabs. And you gave him the 2 wrong one. 3 MR. CLUFF: And we printed 4 all four of them. 5 MR. NICHOLAS: And you're 6 taking the wrong one -- 7 MR. CLUFF: We were prepared 8 to ask the witness further 9 questions -- 10 MR. NICHOLAS: You 11 deliberately -- 12 MR. CLUFF: You told us that 13 that was not the list. You did 14 not tell us that was not the list. 15 That's the record. 16 MR. MAHADY: You skipped the 17 first three -- 18 MR. CLUFF: You say what you 19 want. 20 MR. MAHADY: -- tabs and 21 went right to Tab 4. 22 MR. CLUFF: This is 23 discovery, Zach. 24 MR. MAHADY: If you have the</p>	<p style="text-align: right;">Page 308</p> <p>1 to get out of here. It's a 2 Saturday -- 3 MR. NICHOLAS: No, I know we 4 are going seven hours, there's no 5 question about that. We went 6 seven hours yesterday and we're 7 going seven today. 8 I'm not trying to harass -- 9 MR. PIFKO: If I go seven 10 hours, that's my right, okay? I'd 11 like to be done as soon as I can 12 as well, okay? And this time 13 arguing does not count towards the 14 record. 15 If it would make you feel 16 better, I would be happy to show 17 him the other tabs. The numbers 18 he discussed are the numbers. 19 That's the fact. 20 MR. NICHOLAS: I'm not -- 21 MR. PIFKO: So it doesn't 22 make any difference. 23 MR. NICHOLAS: -- saying 24 anything about the numbers. I'm</p>
<p style="text-align: right;">Page 307</p> <p>1 other three, show him the list. 2 If you have the other three tabs, 3 show him the other three tabs. 4 MR. CLUFF: You are free to 5 show him the other tabs. We asked 6 him a line of questions about the 7 tab that we wanted to talk about 8 to begin with. 9 His testimony was that was 10 the tab, when he was asked, of the 11 customers. 12 MR. NICHOLAS: You poisoned 13 the record. 14 MR. PIFKO: No, you did, 15 okay? 16 MR. NICHOLAS: You poisoned 17 the record. You guys poisoned the 18 record by deliberately giving him 19 the wrong thing. 20 MR. PIFKO: If it makes you 21 feel better, I will hand him the 22 other tabs. I was honestly trying 23 to be quick. You've mentioned on 24 multiple occasions that you want</p>	<p style="text-align: right;">Page 309</p> <p>1 talking about this BS display that 2 you made to the jury. 3 MR. PIFKO: That's not -- do 4 you agree or disagree that that is 5 a document that was attached to 6 that e-mail? Did we misrepresent 7 that that's part of the e-mail, 8 that that's part of the 9 attachment? 10 MR. NICHOLAS: Mark, there's 11 an unlimited number of documents 12 in the world, you can throw to 13 someone. So what? You have -- 14 MR. PIFKO: Is that -- 15 MR. NICHOLAS: You gave him 16 the wrong document. And you did 17 it on purpose. 18 MR. PIFKO: Is that a 19 document that was attached from 20 that spreadsheet; yes or no? 21 MR. NICHOLAS: It's the 22 wrong spreadsheet, as you well 23 know. 24 MR. CLUFF: It's not the</p>

Page 310	Page 312
<p>1 wrong spreadsheet. 2 MR. PIFKO: No, it's not the 3 wrong spreadsheet. 4 MR. NICHOLAS: It's the 5 wrong part of the spreadsheet, 6 which you knew. 7 MR. PIFKO: It's part of the 8 spreadsheet -- 9 MR. NICHOLAS: Look, guys, 10 you do you agree that this list of 11 13,000 -- 13,000 files is not the 12 list of the 3,000 you were asking 13 him about? 14 MR. PIFKO: You 15 completely -- 16 MR. NICHOLAS: Right? 17 MR. PIFKO: You 18 completely -- 19 MR. NICHOLAS: You know 20 this, why don't you just correct 21 the record? 22 MR. PIFKO: You completely 23 bungled the attempt to correct the 24 record by disclosing all of this</p>	<p>1 you make an honest record. 2 You're big on let's have a 3 clean record, let's get answers to 4 questions. 5 MR. PIFKO: I am. 6 MR. NICHOLAS: Do you want 7 real answers? 8 MR. PIFKO: Your witness has 9 been dodging the questions all 10 day. 11 MR. NICHOLAS: Do you want 12 straight stuff or not? 13 MR. PIFKO: I do. 14 MR. NICHOLAS: Do you want 15 to be straight or not? 16 MR. PIFKO: I do. 17 MR. NICHOLAS: This is 18 not -- 19 MR. PIFKO: I do want to be 20 straight. 21 MR. NICHOLAS: -- playing it 22 straight. This is not just 23 playing it straight, guys, and you 24 know it.</p>
Page 311	Page 313
<p>1 in front of the witness. 2 MR. NICHOLAS: I don't think 3 so, Mark. 4 MR. PIFKO: Yes, you did. 5 We could have fixed it. But you 6 screwed it all up, and now we 7 can't do it because you disclosed 8 it in front of the witness. 9 MR. NICHOLAS: We can fix 10 it. You can -- 11 MR. PIFKO: No. 12 MR. NICHOLAS: It's very 13 easy to fix. You show him the 14 correct -- show him the correct 15 spreadsheets, and you say, I 16 showed you the wrong spreadsheet 17 before, I'd like -- 18 MR. PIFKO: Again, now 19 you're telling him what to say. 20 You're walking us through the 21 conversation in front of the 22 witness. 23 MR. NICHOLAS: No, no, no. 24 I'm telling you what to say, so</p>	<p>1 MR. PIFKO: We're going to 2 move on. 3 MR. NICHOLAS: So you're not 4 going to do anything? You're not 5 going to correct the record? 6 MR. PIFKO: I'm going to 7 move on and ask the questions that 8 I want to ask. This is my 9 deposition. 10 BY MR. PIFKO: 11 Q. I'm handing you what is 12 marked -- 13 MR. NICHOLAS: So for the 14 record -- 15 BY MR. PIFKO: 16 Q. -- Exhibit-15. 17 MR. NICHOLAS: For the 18 record, counsel is refusing to 19 correct the record, knowing that 20 it's inaccurate and knowing -- 21 MR. PIFKO: I do not have 22 any information -- 23 MR. NICHOLAS: Knowing that 24 he put an inaccurate document</p>

Page 314

1 that's not only misleading, but a
2 wrong document, in front of the
3 witness.
4 - - -
5 (Whereupon,
6 AmerisourceBergen-May Exhibit-15,
7 Tab Printout, was marked for
8 identification.)
9 - - -
10 BY MR. PIFKO:
11 Q. Sir, I want to direct you
12 back --
13 MR. NICHOLAS: We reserve
14 all rights on this.
15 BY MR. PIFKO:
16 Q. I want to direct you back to
17 Exhibit-14, which was the prescriber
18 action document that Purdue sent to
19 AmerisourceBergen.
20 Do you recall discussing
21 that?
22 A. Yes.
23 Q. And your counsel, again,
24 trying to influence the proceedings

Page 315

1 improperly, made some objections about
2 whether there even was such a list.
3 Well, I've just handed you
4 what's marked as Exhibit-15, a copy of
5 the list, which if you look at
6 Exhibit-14, it says, Attachment
7 prescriber action weekly grid.
8 Exhibit-15 is a printout of that grid.
9 MR. NICHOLAS: I object to
10 the form.
11 BY MR. PIFKO:
12 Q. It's Bates labeled --
13 MR. NICHOLAS: I object to
14 the characterization.
15 BY MR. PIFKO:
16 Q. -- ABDCMDL 00002239.
17 MR. NICHOLAS: What's your
18 question?
19 BY MR. PIFKO:
20 Q. Take your time to review the
21 document, sir.
22 MR. NICHOLAS: So we don't
23 have a repetition of what happened
24 last time, in case anyone asks the

Page 316

1 witness to hold this up --
2 MR. PIFKO: Stop making false
3 accusations.
4 MR. NICHOLAS: In case
5 anyone asks the witness to hold up
6 this stack of paper, half of it is
7 blank. Half of these page are
8 blank.
9 BY MR. PIFKO:
10 Q. Have you seen this -- have
11 you seen this document before,
12 Exhibit-15?
13 A. I'm not familiar with this
14 document.
15 Q. You were -- you did receive
16 the e-mail attaching it, correct? We
17 established that earlier?
18 MR. NICHOLAS: Object to the
19 form. You're representing that
20 this was attached to the e-mail.
21 He just said he's never seen the
22 document.
23 MR. PIFKO: Again, you're
24 coaching the witness.

Page 317

1 MR. NICHOLAS: No, now I
2 have to be this way because of
3 what you did the last time with
4 that stack of documents that was
5 so inaccurate. Now I have no
6 choice.
7 MR. PIFKO: You have no right
8 to be this way. You're coaching
9 the witness. You've been doing it
10 yesterday and today.
11 MR. NICHOLAS: No, I --
12 MR. PIFKO: All day long.
13 MR. NICHOLAS: -- really
14 haven't.
15 MR. PIFKO: Yes, you have.
16 MR. NICHOLAS: No, I
17 haven't.
18 THE WITNESS: So I have this
19 list in front of me. I don't
20 recognize this list. I see there
21 was an attachment on the e-mail
22 sent to me. I don't recall
23 specifically opening the
24 attachment, but I don't recall not

Page 318

1 opening the attachment.
2 MR PIFKO: Clearly, your
3 counsel has influenced your
4 testimony. And that is wholly
5 inappropriate.
6 Move to strike that
7 response.
8 BY MR. PIFKO:
9 Q. You talk --
10 MR. NICHOLAS: Object to the
11 form.
12 BY MR PIFKO:
13 Q. You talk, in the --
14 MR. NICHOLAS: Object to the
15 form.
16 BY MR PIFKO:
17 Q. -- in Exhibit-14 about, We
18 could add this to our due diligence list
19 on the S drive.
20 Do you see that?
21 A. I do.

[REDACTED]

Page 319

[REDACTED]

Page 320

[REDACTED]

Page 321

[REDACTED]

Page 322

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

Page 323

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 BY MR PIFKO:
13 Q. Okay. Thank you.
14 MR. NICHOLAS: Can you ask
15 him to hold that list up in
16 contrast to the one --
17 MR. PIFKO: I'm not going to
18 ask him --
19 MR. NICHOLAS: -- you
20 mistakenly held up.
21 MR PIFKO: You're trying to
22 testify for him, stop.
23 MR. NICHOLAS: No, you said
24 you wanted --

Page 324

1 MR PIFKO: Stop.
2 MR. NICHOLAS: You said you
3 wanted --
4 MR. PIFKO: I asked him if
5 there was anything he wanted to
6 do, and now you're trying to tell
7 him what to do. Stop.
8 MR. NICHOLAS: You said you
9 wanted to correct the record.
10 MR. PIFKO: I asked him -- I
11 gave him a full opportunity.
12 MR. NICHOLAS: You said you
13 wanted to correct it.
14 MR. PIFKO: I'm moving on.
15 MR. NICHOLAS: Do you want
16 to correct it or not? Ask him to
17 hold them both up.
18 MR PIFKO: You're coaching
19 him. No.
20 MR. NICHOLAS: I'm not
21 coaching him. I'm asking him to
22 hold -- you asked him to hold up
23 something and I'm asking him to
24 hold up something.

Page 325

1 MR PIFKO: You need to stop
2 talking. Seriously, we're going
3 to go to court on you.
4 MR. NICHOLAS: If we go to
5 court on this, that's probably
6 something you want to do.
7 MR. PIFKO: I feel fine.
8 I've done nothing wrong.
9 MR. NICHOLAS: Doubt it.
10 - - -
11 (Whereupon,
12 AmerisourceBergen-May Exhibit-19,
13 ABDCMDL 00159841, was marked for
14 identification.)
15 - - -
16 MR PIFKO: I want to make
17 one other comment about that
18 document. It also had hidden tabs
19 that our review team had to --
20 hidden columns in the spreadsheet
21 that our review team had to
22 unhide.
23 So your production of the
24 document was not a fair production

Page 326

1 that allowed us to review it in a
2 proper way.
3 MR. MAHADY: It was produced
4 in a native format.
5 MR. NICHOLAS: It was
6 produced --
7 BY MR. PIFKO:
8 Q. I'm handing you --
9 MR. NICHOLAS: -- the way it
10 was supposed to be produced, which
11 was in native format.
12 BY MR PIFKO:
13 Q. I've handed you what has
14 been marked as Exhibit-19. It's a
15 PowerPoint presentation marked ABDCMDL
16 00159841. I'll represent to you that the
17 metadata from that document states that
18 you are the custodian. It's a file
19 called CSRA Diversion Control General
20 Awareness Training, Draft. And the
21 document is dated April 20th, 2016.
22 Please review that and let
23 me know when you're done.
24 A. Okay.

Page 327

1 Q. Have you seen this document
2 before?
3 A. Yes.
4 Q. This is a presentation that
5 you made?
6 A. Yes.
7 Q. What was this for?
8 A. To the best of my
9 recollection, this was to our compliance
10 managers during our annual training
11 process for compliance managers. And we
12 held this training conference at our
13 corporate headquarters.
14 Q. And this is -- do you agree
15 that this presentation was made in April
16 2016, as it states here?
17 A. Correct.
18 I guess the only caveat here
19 is, you mentioned that it said draft.
20 There may have been a final copy of this.
21 But, generally, that would represent
22 here, in draft form, at least, what I
23 presented.
24 Q. Do you recall making this

Page 328

1 presentation?
2 A. I do generally recall.
3 Q. I want to direct your
4 attention to Page 4, which is also Slide
5 4.
6 A. Yes.
7 Q. Can you tell me what this
8 slide reflects?
9 A. Again, this was an effort by
10 me to sensitize the compliance managers
11 to certain data relative to the opioid
12 problem.
13 Q. Why did you want to
14 sensitize them to this data?
15 A. General awareness training
16 for diversion.
17 Q. Why would you want to make
18 them aware of this information?
19 MR. NICHOLAS: Object to the
20 form. Asked and answered.
21 THE WITNESS: Again, it was
22 a diverse group of people, and I'm
23 not sure of everyone's level of
24 knowledge relative to some of the

Page 329

1 issue, in a very general way.
2 So it's just my attempt to
3 provide information, share
4 information and educate and inform
5 people.
6 BY MR PIFKO:
7 Q. As the head of the diversion
8 control division, you wanted other people
9 in the company to be aware of the
10 diversion and prescription drug abuse
11 statistics that are provided here --
12 MR. NICHOLAS: Objection.
13 BY MR. PIFKO:
14 Q. -- is that correct?
15 MR. NICHOLAS: Object to the
16 form of that question.
17 THE WITNESS: Again, my
18 response is the entire
19 presentation was intended to --
20 again, General Awareness was the
21 title.
22 And not knowing everyone's
23 level of information relative to
24 diversion control, and even some

Page 330

1 of the things that we do in the
2 diversion control team versus
3 maybe some of their
4 responsibilities at the
5 distribution center, it's an
6 effort to educate and inform
7 everybody.
8 BY MR PIFKO:
9 Q. What does this timeline
10 reflect on this slide?
11 MR. NICHOLAS: Object to the
12 form.
13 BY MR PIFKO:
14 Q. While you're reviewing it,
15 on the left of the timeline, it says,
16 1983, Vicodin becomes available as a
17 generic.
18 1986, published paper
19 concludes that opioid pain killers could
20 be prescribed safely on a long-term
21 basis.
22 1995, OxyContin receives
23 approval from FDA. American Pain Society
24 introduces a campaign entitled, quote,

Page 331

1 Pain is the Fifth Vital Sign, end quote.
2 1996, Purdue Pharma begins
3 multiyear educational programs promoting
4 long-term use of opioid pain killers.
5 2000s, physicians expand
6 their treatment of pain through use of
7 the growing number of approved
8 prescription opioids. Prescription pain
9 killers flood the market.
10 2014, four times annual
11 increase in prescriptions from 1999 to
12 2014. Five times annual increase in
13 overdose deaths related to opioids.
14 Did I read that correctly?
15 A. You did.
16 Q. What is this timeline
17 intended to reflect?
18 MR. NICHOLAS: Object to the
19 form. You just read it.
20 THE WITNESS: So this
21 timeline -- I can't tell you the
22 source. I acquired it from
23 somewhere, some sort of public
24 document. And I inserted it in

Page 332

1 here as part of the training
2 program.
3 BY MR PIFKO:
4 Q. What did you want people to
5 see when you -- by putting this in here?
6 What were you trying to communicate?
7 MR. NICHOLAS: Object to the
8 form. You just read it.
9 THE WITNESS: The timeline
10 represents certain information
11 relative to the opioid
12 prescribing, with dates associated
13 with it.
14 And, again, other than it
15 offering background and a timeline
16 and information relative to dates,
17 it was intended to be educational.
18 That was my intent.
19 BY MR PIFKO:
20 Q. Is it intended to educate
21 people about the relevant milestones with
22 respect to the opioid crisis, agree?
23 MR. NICHOLAS: Objection to
24 the form of the question.

Page 333

1 THE WITNESS: And, again,
2 going back to my related response,
3 all of this was intended to be
4 general training and information
5 purposes for our compliance
6 managers around the issue of
7 opioids.
8 BY MR PIFKO:
9 Q. Right. And this timeline --
10 by showing this timeline, you were
11 intending to educate people of the
12 relevant milestones with respect to the
13 opioid crisis; is that correct?
14 MR. NICHOLAS: Object to the
15 form of the question. Asked and
16 answered at least twice.
17 THE WITNESS: Again, it
18 was -- I had no specific goal
19 relative to the content or the
20 dates. It was part of general
21 awareness training, sharing that
22 information that I saw, as well as
23 all this other information as part
24 of the general awareness training.

<p style="text-align: right;">Page 334</p> <p>1 I did not have a specific 2 objective in mind with sharing 3 this particular part of the 4 training, beyond my general 5 awareness and education intent. 6 BY MR PIFKO: 7 Q. Let's go to the next page, 8 Page 5. 9 This slide says, Causes, 10 with a subheading, Driving factors behind 11 diversion and prescription drug abuse. 12 Can you tell me what's 13 reflected here? 14 A. Again, information that I've 15 gathered through my own experience and 16 exposure to various data and stories and 17 content. I put together this general 18 PowerPoint bullet/slide. 19 Q. And it's your view that 20 these are driving factors behind 21 diversion and prescription drug abuse; is 22 that correct? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. What's reflected here? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: I would rely 5 upon the description here. Again, 6 this was -- this was content, 7 public content, that I took from 8 somewhere and put it on this 9 slide. 10 I see 2016 PDMP report on 11 the bottom. I'm not sure why it 12 would say that if they're talking 13 about -- if it purports to be 14 national rates. I'm not sure, 15 quite frankly. 16 I would rely upon what's on 17 there as -- 18 BY MR PIFKO: 19 Q. This chart shows sales of 20 opioids -- what does it show, do you 21 know? 22 MR. NICHOLAS: Object to the 23 form. And I'll object to the 24 scope of this line of questioning</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: These are some 2 of the factors behind diversion 3 and prescription drug abuse. 4 BY MR PIFKO: 5 Q. You don't have any actions 6 committed by distributors here; is that 7 correct? 8 MR. NICHOLAS: Object to the 9 form. 10 But go ahead. 11 THE WITNESS: I do not. 12 BY MR PIFKO: 13 Q. Let's go to the next slide. 14 It says, Trends, diversion 15 and substance abuse statistics. 16 Do you see that? 17 A. I do. 18 Q. And then it's got a chart, 19 Prescription painkiller sales and 20 age-adjusted rates for drug poisoning 21 deaths by drug -- by type of drug, United 22 States, 2000 to 2014. 23 Do you see that? 24 A. I do.</p>	<p style="text-align: right;">Page 337</p> <p>1 in general. 2 THE WITNESS: Again, I'm 3 just looking at the title, 4 Prescription Painkiller Sales and 5 Age-Adjusted Rates For Drug 6 Poisoning Tests By Type of Drug. 7 But it doesn't really give 8 you by type of drug, other than 9 saying opioid analgesics versus 10 heroin deaths, and then sales. 11 So, again, it's a little bit 12 hard to decipher at this point. I 13 probably, at the time of the 14 presentation, was more familiar 15 with where it was derived from and 16 could speak to it. But at this 17 point -- 18 BY MR PIFKO: 19 Q. Let's go to the next page, 20 Slide 7. 21 The slide says, What is 22 diversion control. 23 Correct? 24 A. Yes.</p>

Page 338

1 Q. And the speaker notes on the
2 bottom, it says, So what is diversion?
3 In my own words, diversion is any
4 activity, including negligence, which
5 results in a prescription drug being
6 removed from its intended, legitimate
7 medical use. Diversion can take place
8 anywhere along the closed system path,
9 from manufacturer, to distributor,
10 prescriber, dispenser and end user.
11 Do you see that?
12 A. I do.
13 Q. Do you agree with that?
14 MR. NICHOLAS: Object to the
15 form.
16 THE WITNESS: Again --
17 MR. NICHOLAS: Object to the
18 scope as well.
19 Go ahead.
20 THE WITNESS: I do agree
21 with it, in terms of it -- of the
22 definition.
23 But I do want to point out
24 it's in my own words. You know,

Page 339

1 words, it should be. It says "in
2 my own words" there, but it's my
3 own words.
4 So this was my, kind of
5 off-the-top-of-my-head definition.
6 BY MR PIFKO:
7 Q. But you believe this to be
8 true?
9 MR. NICHOLAS: Object to the
10 form. Object to the scope. Asked
11 and answered.
12 THE WITNESS: I generally
13 believe this to be true, yes.
14 BY MR PIFKO:
15 Q. Let's go to the next page.
16 The heading of the slide is,
17 Commonly Diverted Drugs.
18 Do you see that?
19 A. I do.
20 Q. And it says, Misuse of pain
21 killers represents three-quarters of
22 overall prescription drug abuse.
23 Do you see that?
24 A. I do.

Page 340

1 Q. Do you agree with that
2 statement?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: I agree to
6 that statement at that time and,
7 presumably, I did the -- my own
8 due diligence before I included a
9 statement like that at that time.
10 BY MR PIFKO:
11 Q. The speaker notes below say,
12 And what's being diverted? The biggest
13 threat for diversion continues to be
14 opioids. Unfortunately, these drugs have
15 very addictive qualities. So it happens
16 frequently that you will see someone who
17 was prescribed hydrocodone following an
18 injury or medical intervention for
19 legitimate medical purposes, but then
20 continues to abuse and abuse the drug --
21 use and abuse the drug long after the
22 legitimate medical need has passed.
23 Do you see that?
24 A. Yes.

Page 341

1 Q. Did I read that correctly?
2 A. Yes. I used that more than
3 once, that example.
4 Q. I was going to say, we saw
5 that in another one of your presentations
6 earlier, right?
7 A. Yes.
8 Q. And you agree with that
9 statement?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I generally
13 agree that could be one example of
14 how abuse could take place.
15 - - -
16 (Whereupon,
17 AmerisourceBergen-May Exhibit-20,
18 ABDCMDL 00142341-345, was marked
19 for identification.)
20 - - -
21 BY MR PIFKO:
22 Q. I'm handing you what is
23 marked as Exhibit-20.
24 Take a moment to review that

Page 342

1 and let me know when you're done.
2 For the record, Exhibit-20
3 is Bates labeled ABDCMDL 00142341 through
4 2345.
5 MR. NICHOLAS: I'm going to
6 interpose an objection to the
7 questioning on this document on
8 two grounds, before we proceed.
9 The first is that it appears
10 to pertain to a pharmacy and
11 information that is not contained
12 in the Track 1 jurisdictions. It
13 looks like it's a Pennsylvania
14 situation.
15 And, secondly, which takes
16 us out of his, I believe, the
17 30(b)(6) testimony. And to the
18 extent you're asking him
19 individual questions, he's not on
20 large portions of this document.
21 He's not copied on large portions
22 of this document.
23 So for those two reasons, I
24 object to the use of the document.

Page 343

1 BY MR. PIFKO:
2 Q. Are you done reviewing it?
3 A. Yes, yes.
4 Q. Do you know what this
5 document is?
6 A. It's an e-mail string.
7 Q. I just wanted to ask you a
8 simple question about this document.
9 If you'd go to the second
10 page, ABDCMDL 00142342.
11 Are you there?
12 A. Yes.
13 Q. About a third of the way
14 down, there's an e-mail from Eric
15 Cherveney, dated January 17th, 2017, at
16 6:02 p.m.
17 Do you see that?
18 A. Yes.
19 Q. He says, I don't see the
20 need to order a dispensing report here
21 due to their extreme low volume and high
22 controls. They're clearly using us as
23 secondary for controls.
24 Do you see that?

Page 344

1 A. I do.
2 Q. Do you have an understanding
3 about what's being discussed there?
4 MR. NICHOLAS: Objection for
5 the reasons I stated in my prior
6 objection.
7 THE WITNESS: So I'm happy
8 to talk about this a little bit.
9 It's always a little bit difficult
10 when addressing specific
11 customers. But I think I can talk
12 a little bit about the theme here.
13 BY MR. PIFKO:
14 Q. And that's what I'm trying
15 to get at.
16 A. And so, I guess, to this
17 commentary here, one of the challenges
18 that we face, as a wholesale distributor,
19 is the lack of visibility, in terms of
20 customers who are utilizing two, three,
21 four different distributors.
22 And there are times when we
23 can see, simply from the data, and
24 it's -- again, I'm going to speak

Page 345

1 generally here, because you can't even
2 read the volumes on this first page. But
3 simply from the data, it becomes clear
4 that the customer is using us for the
5 purchase of controls versus their total
6 purchasing, which may be a perfectly
7 legitimate reason by the pharmacy. If
8 I'm an independent pharmacist and I can
9 buy and shop among three or four
10 distributors and get controls at certain
11 prices, then they're going to do that.
12 That's perfectly legitimate.
13 Sometimes it's not
14 legitimate. Sometimes we're being used
15 to supplement other purchasing where a
16 pharmacy may have a distributor that is
17 holding them to certain levels.
18 And so that's a general
19 challenge that we face as a wholesale
20 distributor. And so what is the -- how
21 do we handle those situations? And,
22 again, in speaking generally, when the
23 data is very apparent that the customer
24 is using us just to purchase controls,

<p style="text-align: right;">Page 346</p> <p>1 well, we may just make the decision, hey, 2 you know, we're not going to assume all 3 that risk, even though you may have a 4 legitimate reason for doing so, it 5 doesn't make sense for us to assume all 6 that risk. So you know what, we're just 7 going to terminate the relationship with 8 you.</p> <p>9 And we would just send them 10 a letter to say that, you know -- and we 11 would provide them that reason, that 12 we're not going to assume risk on a 13 secondary basis here.</p> <p>14 And so that's a general 15 theme. And without seeing, before and 16 after, what occurred here, that's my 17 general theme explanation.</p> <p>18 Q. That's helpful. Thank you. 19 That's what I was getting at.</p> <p>20 So I understand a little bit 21 more, when you talk about this risk, I 22 completely understand that you don't know 23 for sure what the reason is, there could 24 be a legitimate reason.</p>	<p style="text-align: right;">Page 348</p> <p>1 a case-by-case basis, not knowing 2 the complete context there.</p> <p>3 And when the data is evident 4 to us that it's a secondary 5 situation and there's risk 6 involved relative to the 7 customer's activity, we may make 8 the decision we're not even going 9 to pursue the relationship any 10 longer, for the sheer fact that 11 there's risk involved with the 12 customer. And we would make that 13 decision.</p> <p>14 I'm not sure that that 15 ultimately was the case here.</p> <p>16 That's --</p> <p>17 BY MR PIFKO: 18 Q. We can put that aside. 19 When you talk about that 20 risk, what do you mean? What kind of 21 risk do you mean?</p> <p>22 MR. NICHOLAS: Object to the 23 form. And scope. 24 THE WITNESS: So the data,</p>
<p style="text-align: right;">Page 347</p> <p>1 But the risk is that there's 2 a potential illegitimate reason that 3 maybe they're -- someone else had a 4 threshold for them and they've gotten to 5 it, and they're coming to you to get 6 more.</p> <p>7 And that's the concern that 8 potentially that could be happening; is 9 that correct?</p> <p>10 MR. NICHOLAS: Object to the 11 form.</p> <p>12 THE WITNESS: Yes. There is 13 a concern that they could be 14 getting controls from multiple 15 sources.</p> <p>16 BY MR PIFKO: 17 Q. And as of 2017, when this 18 e-mail was written, that's not a risk 19 that the company wanted to take on, like 20 you said?</p> <p>21 MR. NICHOLAS: Object to the 22 form.</p> <p>23 THE WITNESS: Again, we 24 handle these similar scenarios on</p>	<p style="text-align: right;">Page 349</p> <p>1 in and of itself, presents a red 2 flag. Because you have a 3 customer, like in this case, has a 4 high percentage of controls. 5 That's risk. And that -- because 6 of that risk, we may make that 7 decision.</p> <p>8 BY MR PIFKO: 9 Q. When you say "red flag," 10 that's a red flag for diversion, like we 11 saw in the presentation?</p> <p>12 MR. NICHOLAS: Object to the 13 form.</p> <p>14 THE WITNESS: There are 15 several red flags that we monitor 16 for, that we investigate. I don't 17 believe I said for diversion, I 18 believe I said there's just red 19 flags relative to their ordering 20 activity that we investigate, if I 21 recall correctly.</p> <p>22 BY MR PIFKO: 23 Q. But I was just trying to 24 understand, is a red flag indicia of what</p>

Page 350

1 something that gives rise -- your
2 division is diversion control?
3 MR. NICHOLAS: Hold on. Is
4 that a question? It isn't a
5 question yet.
6 BY MR PIFKO:
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 MR PIFKO: We can take a
24 break.

Page 351

1 VIDEO TECHNICIAN: Going off
2 the record. 4:35 p.m.
3 - - -
4 (Whereupon, a brief recess
5 was taken.)
6 - - -
7 VIDEO TECHNICIAN: We're
8 back on record at 4:48 p.m.
9 BY MR PIFKO:
10 Q. Can you get Exhibits-16 and
11 18 and 17 and 13 in front of you again?
12 - - -
13 (Whereupon, a discussion off
14 the record occurred.)
15 - - -
16 BY MR. PIFKO:
17 Q. Specifically, I want you to
18 look at 13.
19 Can you tell me what 13 is?
20 And you can refer, remember, this is an
21 attachment to Exhibit-12, if you want to
22 look at the one-page e-mail.
23 So there's a lot of numbers
24 in front of you. Take your time to get

Page 352

1 what you need to look at this.
2 MR. NICHOLAS: What are you
3 asking him?
4 MR PIFKO: I'll get there.
5 THE WITNESS: Okay. I have
6 12 and I have 13.
7 BY MR PIFKO:
8 Q. And I want you to have 16,
9 18 and 17 in front of you as well.
10 A. 16, 18, and 17, okay.
11 Things aren't very well organized over
12 here, so.
13 Q. Same on my side.
14 MR. NICHOLAS: Is that what
15 you want, 16, 17, 18 and 13?
16 MR PIFKO: He needs to look
17 at the official copies.
18 MR. NICHOLAS: Then he has
19 to find them. It's these. 16,
20 17, 18, 13.
21 THE WITNESS: So do I have
22 them all together, then?
23 So I have 12, 13, 16, 17 and
24 18.

Page 353

1 BY MR PIFKO:
2 Q. Do you have -- it looks
3 like, in front of you, you just have two
4 documents.
5 You've got to use your
6 copies. You've got to use the official
7 exhibits.
8 A. I don't have them.
9 Q. They've got to be there
10 somewhere. They're not those. So you
11 can put them -- I'm not talking about --
12 maybe they're in that stack there.
13 A. No, I went through this
14 already.
15 MR. NICHOLAS: I don't care
16 if he uses these.
17 MR PIFKO: It's concerning
18 to me that -- there they are.
19 They are in front of you, Bob.
20 Stolen exhibits.
21 - - -
22 (Whereupon, a discussion off
23 the record occurred.)
24 - - -

Page 354

[REDACTED]

Page 356

[REDACTED]

Page 355

[REDACTED]

Page 357

[REDACTED]

Page 358

[REDACTED]

Page 360

1 concluded at 4:57 p.m.)
2 - - -
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Page 359

1 [REDACTED]
2 MR PIFKO: I don't know if
3 AmerisourceBergen's counsel has
4 any questions for you, but if they
5 do, I may have some additional
6 questions for you.
7 And if additional documents
8 may be produced in this case, I
9 may seek to call you back, at
10 which time I would confer with
11 AmerisourceBergen's counsel.
12 Subject to that, I don't
13 have any further questions of you
14 at this time.
15 MR. NICHOLAS: I have no
16 questions at this time. Thank
17 you.
18 Thank you, Mr. May.
19 VIDEO TECHNICIAN: This ends
20 today's deposition. We're going
21 off the record. The time is 4:57
22 p.m.
23 - - -
24 (Whereupon, the deposition

Page 361

1 CERTIFICATE
2
3
4 I HEREBY CERTIFY that the
5 witness was duly sworn by me and that the
6 deposition is a true record of the
7 testimony given by the witness.
8
9
10
11 Amanda Maslinsky-Miller
12 Certified Realtime Reporter
13 Dated: August 7, 2018
14
15
16
17 (The foregoing certification
18 of this transcript does not apply to any
19 reproduction of the same by any means,
20 unless under the direct control and/or
21 supervision of the certifying reporter.)
22
23
24

Page 362

INSTRUCTIONS TO WITNESS

1
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.
8 After doing so, please sign
9 the errata sheet and date it.
10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.
14 It is imperative that you
15 return the original errata sheet to the
16 depositing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24

Page 363

- - - - -
E R R A T A
- - - - -

1
2
3
4 **PAGE LINE CHANGE**
5 _____
6 **REASON:** _____
7 _____
8 **REASON:** _____
9 _____
10 **REASON:** _____
11 _____
12 **REASON:** _____
13 _____
14 **REASON:** _____
15 _____
16 **REASON:** _____
17 _____
18 **REASON:** _____
19 _____
20 **REASON:** _____
21 _____
22 **REASON:** _____
23 _____
24 **REASON:** _____

Page 364

ACKNOWLEDGMENT OF DEPONENT

1
2
3 I, _____, do
4 hereby certify that I have read the
5 foregoing pages, 1 - 360, and that the
6 same is a correct transcription of the
7 answers given by me to the questions
8 therein propounded, except for the
9 corrections or changes in form or
10 substance, if any, noted in the attached
11 Errata Sheet.
12
13
14
15 **DAVID MAY** **DATE** _____
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Page 365

LAWYER'S NOTES

1
2 **PAGE LINE**
3 _____
4 _____
5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____